FILE COPY

OCT 30 1947

No. 71

In the Supreme Court of the United States

OCTOBER TERM, 1947

H. C. JONES, COLLECTOR OF INTERNAL REVENUE,
PETITIONER

v.

THE LIBERTY GLASS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE PETITIONER

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	5
Specification of errors to be urged	7
Summary of argument	8
Argument:	
The taxpayer's claim for refund is barred by the statute of limitations as prescribed in Section 322(b)	9
Preliminary analysis	9
A. The term "overpayment" as used in Section 322 includes taxes alleged to have been "erroneously or illegally assessed or collected"	12
B. The legislative history of Sections 322 and 3313 conclusively supports the Government's position	20
C. The decision below is contrary to a consistent, unambiguous and long established administrative practice	31
D. The decision below as applied to other sections of the Internal Revenue Code would produce incongruous and harsh results	38
1. The payment of interest on refunds of erroneous assessments of tax would be prohibited	38
2. The jurisdiction of the Tax Court would be curtailed	42
E. The lower court cases on which the court below relied were erroneously decided	44
F. The doctrine of legislative acquiescence, relied on below, is inapplicable to this case	50
Conclusion	53
Appendix	54

CITATIONS

Cases:	
American Hide & L. Co. v. *United States*, 284 U. S. 343	27
American Security & Trust Co. v. *Tait*, 5 F. Supp. 337	37, 38
Blair v. *Birkenstock*, 271 U. S. 348	38, 39
Boehm v. *Commissioner*, 326 U. S. 287	36
B & O Railroad v. *Baugh*, 149 U. S. 368	52

Cases—Continued

	Page
Brewer v. *National Life & Acc. Ins. Co.*, 119 F. 2d 313	16
Central Hanover Bank & Trust Co. v. *United States*, 67 F. Supp. 920	32, 44
Commissioner v. *Gooch Co.*, 320 U. S. 418	32
Commissioner v. *Rieck*, 104 F. 2d 294, certiorari denied, 308 U. S. 602	32
Connell v. *Hopkins*, 43 F. 2d 773	34
Douglas v. *Commissioner*, 322 U. S. 275	36
duPont v. *Graham*, 283 Fed. 300, affirmed, 284 Fed. 1017	32
Electric Battery Co. v. *Shimadzu*, 307 U. S. 5	52
Fawcett v. *United States*, 70 F. Supp. 742	44
Felt & Tarrant Mfg. Co. v. *United States*, 37 F. 2d 977	38
Friday, Wm. J., & Co. v. *United States*, 48 F. 2d 225	37
Friday, Wm. J., & Co. v. *United States*, 61 F. 2d 370	38
Garbutt Oil Co. v. *United States*, 89 F. 2d 749	32
Girard Trust Co. v. *United States*, 270 U. S. 163	37
Girouard v. *United States*, 328 U. S. 61	52
Godfrey v. *United States*, 61 F. Supp. 240	44, 49
Graham v. *duPont*, 262 U. S. 234	27, 30, 32
Grays Harbor Motorship Corp. v. *United States*, 45 F. 2d 259	38
Great Southern Life Ins. Co. v. *United States*, 42 F. 2d 319	38
Greylock Mills v. *Commissioner*, 9 B. T. A. 1281, affirmed 31 F. 2d 655	43
Helvering v. *Hallock*, 309 U. S. 106	51
Helvering v. *Reynolds*, 313 U. S. 428	50
Helvering v. *Winmill*, 305 U. S. 79	36
Hills v. *United States*, 50 F. 2d 302	30
Huntley v. *Standard Timber Co.*, 62 F. 2d 568	37
Huntley v. *Souther Oregon Sales*, 102 F. 2d 538	9, 32, 39, 44, 45, 47, 49, 50
Huntley v. *Southern Oregon Sales*, 104 F. 2d 153	39
Hyatt Roller Bearing Co. v. *United States*, 43 F. 2d 1008	32
Kreider, A. S., Co. v. *United States*, 117 F. 2d 133, reversed, 313 U. S. 443	16
Lewis v. *Reynolds*, 48 F. 2d 515, affirmed, 284 U. S. 281	12, 32
Lucas v. *United States*, 45 F. 2d 291	32, 38
McCarl v. *United States ex rel. Leland*, 42 F. 2d 346	38
McKesson & Robbins v. *Edwards*, 57 F. 2d 147	37
Maass v. *Higgins*, 312 U. S. 443	37
Manhattan Prop. v. *Irving Tr. Co.*, 291 U. S. 320	51, 52
Marks v. *United States*, 98 F. 2d 564	38
Mellon v. *United States*, 36 F. 2d 609	38
Missouri v. *Ross*, 299 U. S. 72	51
Nobie v. *Kavanagh*, 66 F. Supp. 258, affirmed, 160 F. 2d 104	44, 50
Ohio Steel Foundry Co. v. *United States*, 38 F. 2d 144	38, 43
Olsen v. *United States*, 32 F. Supp. 276	44, 49
Pelham Hall Co. v. *Carney*, 111 F. 2d 944	32

Cases—Continued Page

Philipsborn v. *United States*, 53 F. 2d 133 38
Rosenman v. *United States*, 323 U. S. 658 ..... 32, 39, 42
Roslyn Fuel Co. v. *Commissioner*, 16 B. T. A. 285 43
Safe Deposit & Trust Co. of Baltimore v. *Tait*, 54 F. 2d 383 37
Sbarbaro v. *United States*, decided May 29, 1947 ..... 39, 44, 50
Sessions v. *Romadka*, 145 U. S. 29 51
State Street Trust Co. v. *United States*, 59 F. Supp. 467, affirmed, 151 F. 2d 1022 32
Taft v. *Commissioner*, 304 U. S. 351 36
Tindle's Estate, In re, 59 F. Supp. 667, affirmed *sub nom. Pennsylvania Co. for Insurance on Lives* v. *United States*, 152 F. 2d 757 ..... 44, 49
Union Trust Co. v. *United States*, 70 F. 2d 629 38
United States Cartridge Co. v. *United States*, 284 U. S. 511 37
United States v. *Amer. Trucking Assn's.*, 310 U. S. 534 31
United States v. *Boston Buick Co.*, 282 U. S. 476 39
United States v. *Clarke*, 69 F. 2d 748, certiorari denied, 293 U. S. 564 30
United States v. *Elgin, J. & E. Ry.*, 298 U. S. 492 51
United States v. *Factors & Finance Co.*, 288 U. S. 89 32
United States v. *Frauenthal*, 138 F. 2d 188 32
United States v. *Garbutt Oil Co.*, 302 U. S. 528 ..... 16, 32, 37
United States v. *Kales*, 314 U. S. 186 ..... 37, 38
United States v. *Lederer Terminal W. Co.*, 139 F. 2d 679 ..... 33, 44, 47, 48
United States v. *Magnolia Co.*, 276 U. S. 160 39
United States v. *Memphis Cotton Oil Co.*, 288 U. S. 62 ..... 13, 37
United States v. *Henry Prentiss & Co.*, 288 U. S. 73 ..... 14, 37
United States v. *Ryan*, 284 U. S. 167 52
United States v. *Underwriters Assn.*, 322 U. S. 533 51
U. S. ex rel. Girard Co. v. *Helvering*, 301 U. S. 540 ..... 37, 43
Warren Mfg. Co. v. *Tait*, 60 F. 2d 982 43
Weinburg v. *United States*, 25 F. Supp. 83, certiorari denied, 306 U. S. 661 32
Welch Ins. Agency v. *Brast*, 55 F. 2d 60, certiorari denied, 285 U. S. 555 32
Wisconsin Nat. Life Ins. Co. v. *United States*, 42 F. 2d 316 ..... 32, 27, 38

Statutes:

Act of March 4, 1923, c. 276, 42 Stat. 1504, Sec. 1 ..... 19, 25, 26, 27, 47, 54
Act of March 13, 1924, c. 55, 43 Stat. 22 19
Act of March 3, 1925, c. 435, 43 Stat. 1115 19
Act of February 10, 1939, c. 2, 53 Stat. 1, Sec. 6 17
Current Tax Payment Act of 1943, c. 120, 57 Stat. 126, Sec. 4 19
Individual Income Tax Act of 1944, c. 210, 58 Stat. 231: Sec. 6 19

Statutes—Continued

Internal Revenue Code: Page

Sec. 143 (26 U. S. C. 1940 ed., Sec. 143) 27
Sec. 321 54
Sec. 322 (26 U. S. C. 1940 ed., Supp. V, Sec. 322) 2, 3, 8, 10, 11, 13, 14, 16, 17, 19, 42, 54
Sec. 781 (26 U. S. C. 1940 ed., Sec. 781) 16
Sec. 871 (26 U. S. C. 1940 ed., Sec. 871) 17
Sec. 910 (26 U. S. C. 1940 ed., Sec. 910) 10, 49
Sec. 1012 (26 U. S. C. 1940 ed., Sec. 1012) 17
Sec. 1027 (26 U. S. C. 1940 ed., Sec. 1027) 10
Sec. 1300 (26 U. S. C. 1940 ed., Sec. 1300) 18
Sec. 1700 (26 U. S. C. 1940 ed., Sec. 1700) 18
Sec. 1800 (26 U. S. C. 1940 ed., Sec. 1800) 18
Sec. 1850 (26 U. S. C. 1940 ed., Sec. 1850) 18
Sec. 1900 (26 U. S. C. 1940 ed., Sec. 1900) 18
Sec. 1920 (26 U. S. C. 1940 ed., Sec. 1920) 18
Sec. 2000 (26 U. S. C. 1940 ed., Sec. 2000) 18
Sec. 2300 (26 U. S. C. 1940 ed., Sec. 2300) 19
Sec. 2350 (26 U. S. C. 1940 ed., Sec. 2350) 19
Sec. 2400 (26 U. S. C. 1940 ed., Sec. 2400) 19
Sec. 2470 (26 U. S. C. 1940 ed., Sec. 2470) 19
Sec. 2490 (26 U. S. C. 1940 ed., Sec. 2490) 19
Sec. 2550 (26 U. S. C. 1940 ed., Sec. 2550) 19
Sec. 2650 (26 U. S. C. 1940 ed., Sec. 2650) 19
Sec. 2700 (26 U. S. C. 1940 ed., Sec. 2700) 19
Sec. 2800 (26 U. S. C. 1940 ed., Sec. 2800) 19
Sec. 3200 (26 U. S. C. 1940 ed., Sec. 3200) 19
Sec. 3313 (26 U. S. C. 1940 ed., Sec. 3313) 3, 6, 8, 10, 11, 14, 15, 16, 20, 49, 54
Sec. 3400 (26 U. S. C. 1940 ed., Sec. 3400) 19
Sec. 3466 (26 U. S. C. 1940 ed., Sec. 3466) 19
Sec. 3481 (26 U. S. C. 1940 ed., Sec. 3481) 19
Sec. 3490 (26 U. S. C. 1940 ed., Sec. 3490) 19
Sec. 3520 (26 U. S. C. 1940 ed., Sec. 3520) 19
Sec. 3771 (26 U. S. C. 1940 ed., Sec. 3771) 38
Sec. 3777 (26 U. S. C. 1940 ed., Sec. 3777) 17
Sec. 3779 (26 U. S. C. 1940 ed., Sec. 3779) 16
Sec. 3780 (26 U. S. C. 1940 ed., Sec. 3780) 16
Sec. 3801 (26 U. S. C. 1940 ed., Sec. 3801) 17
Sec. 3804 (26 U. S. C. 1940 ed., Sec. 3804) 17
Sec. 3807 (26 U. S. C. 1940 ed., Sec. 3807) 16, 17

Joint Resolution of June 16, 1930, c. 495, 46 Stat. 589, Sec. 2 19
Revenue Act of 1916, c. 463, 39 Stat. 756 ..... 17, 19, 20, 46, 54
Revenue Act of 1918, c. 18, 40 Stat. 1057:
Sec. 250 21
Sec. 252 ..... 19, 20, 21, 46, 54

Statutes—Continued

Revenue Act of 1921, c. 136, 42 Stat. 227: Page
Sec. 252 ..... 19, 21, 22, 26, 27, 44, 46, 47, 54
Sec. 1316 ..... 21, 47, 54
Sec. 1324 40
Revenue Act of 1924, c. 234, 43 Stat. 253:
Sec. 272 54
Sec. 281 ..... 19, 27, 47, 54
Sec. 1012 54
Sec. 1019 40
Revenue Act of 1926, c. 27, 44 Stat. 9:
Sec. 272 54
Sec. 284 ..... 13, 19, 27, 47, 54
Sec. 319 49
Sec. 1112 54
Sec. 1116 ..... 17, 40
Revenue Act of 1928, c. 852, 45 Stat. 791:
Sec. 144 27
Sec. 321 54
Sec. 322 ..... 13, 19, 54
Sec. 614 40
Sec. 615 39
Sec. 619 54
Revenue Act of 1932, c. 209, 47 Stat. 169:
Sec. 143 27
Sec. 321 54
Sec. 322 ..... 19, 54
Sec. 1106 54
Revenue Act of 1934, c. 277, 48 Stat. 680:
Sec. 143 27
Sec. 321 54
Sec. 322 ..... 19, 54
Revenue Act of 1936, c. 690, 49 Stat. 1648:
Sec. 143 27
Sec. 322 19
Revenue Act of 1938, c. 289, 52 Stat. 447:
Sec. 27 6
Sec. 143 27
Sec. 322 ..... 3, 9, 19
Revenue Act of 1942, c. 619, 56 Stat. 798:
Sec. 169 19
Sec. 172 19
Sec. 457 16
Sec. 501 16
Revised Statutes, Sec. 3228 20,
21, 22, 26, 27, 31, 45, 46, 47, 54
Tax Adjustment Act of 1945, c. 340, 59 Stat. 517, Sec. 5 19

Miscellaneous: Page

G. C. M. 3152, VII–1 Cum. Bull. 153 (1928) 35
G. C. M. 13759, XIII–2 Cum. Bull. 102 (1934) 35
H. Conference Rep. No. 356, 69th Cong., 1st Sess., pp. 42, 48, 49 (1939–1 Cum. Bull. (Part 2) 361, 370–371, 375) .. 31, 43
H. Conference Rep. No. 844, 68th Cong., 1st Sess., pp. 24–25 (1939–1 Cum. Bull. (Part 2) 300, 308) 16
H. Conference Rep. No. 1385, 73d Cong., 2d Sess., p. 26 (1939–1 Cum. Bull. (Part 2) 627, 635) 43
H. Conference Rep. No. 1492, 72d Cong., 1st Sess., p. 29 (1939–1 Cum. Bull. (Part 2) 539, 553) 15
H. Conference Rep. No. 1757, 67th Cong., 4th Sess. (1939–1 Cum. Bull. (Part 2) 856) 25
H. Conference Rep. No. 1882, 70th Cong., 1st Sess. p. 21 (1939–1 Cum. Bull. (Part 2) 444, 452 18
H. Conference Rep. No. 1885, 74th Cong., 1st Sess., p. 12 (1939–1 Cum. Bull. (Part 2) 660, 665) 41
House Hearings on Revenue Act of 1918, 65th Cong., 2d Sess., pp. 120–121 19
House Hearings on Revenue Revision 1924, 68th Cong., 1st Sess., p. 512 41
House Hearings on Revenue Revision 1927–1928, 69th–70th Congresses, pp. 100–101, 138, 187, 545 ..... 41, 43
H. Rep. No. 1, 69th Cong., 1st Sess., pp. 13–14 (1939–1 Cum. Bull. (Part 2) 315, 324) 42
H. Rep. No. 2, 70th Cong., 1st Sess., pp. 11–12, 24–25, 29–30, 35 (1939–1 Cum. Bull. (Part 2) 384, 391–392, 400–401, 403–404, 408) 18, 41, 43
H. Rep. No. 6, 76th Cong., 1st Sess., pp. 3–4 (1939–2 Cum. Bull. 532, 534) 17
H. Rep. No. 179, 68th Cong., 1st Sess., pp. 70–71 (1939–1 Cum. Bull. (Part 2) 241, 264–265) 30
H. Rep. No. 704, 73d Cong., 2d Sess., pp. 35, 37–38 (1939–1 Cum. Bull. (Part 2) 554, 580–581, 582) 43
H. Rep. No. 1491, 67th Cong., 4th Sess., p. 2 (1939–1 Cum. Bull. (Part 2) 848, 849–850) 23
H. Rep. No. 1860, 75th Cong., 3d Sess., pp. 49, 69 (1939–1 Cum. Bull. (Part 2) 728, 764, 778) 43
I. T. 1269, I–1 Cum. Bull. 311 (1922) 22
I. T. 1447, I–2 Cum. Bull. 220 (1922) 34
I. T. 3483, 1941–1 Cum. Bull. 397 36
L. O. 1093, I–1 Cum. Bull. 319 (1922) 22
Mim. 2764, 4 Cum. Bull. 332 (1921) 22
Mim. 4814, 1938–2 Cum. Bull. 96 36
Report of the Joint Committee on Internal Revenue Taxation (1928) Vol. I, pp. 16–17 41
Report of the Joint Committee on Internal Revenue Taxation (1928) Vol. II: Proposed Rearrangement of Income Tax Title 17

Miscellaneous—Continued

Page

Senate Hearings on Revenue Act of 1924, 68th Cong., 1st Sess., pp. 2–57, 52, 54–56 ..... 28, 30, 31, 41
Senate Hearings on Revision 1925, 69th Cong., p. 1009 41
S. Rep. No. 52, 69th Cong., 1st Sess., pp. 25–28, 38 (1939–1 Cum. Bull. (Part 2) 332, 351–352, 360) 40, 43
S. Rep. No. 275, 67th Cong., 1st Sess., pp. 21–22 (1939–1 Cum. Bull. (Part 2) 181, 196) 21
S. Rep. No. 398, 68th Cong., 1st Sess., pp. 33, 34, 44, 45 (1939–1 Cum. Bull. (Part 2) 266, 289, 296) 16, 30
S. Rep. No. 558, 73d Cong., 2d Sess., pp. 44, 47 (1939–1 Cum. Bull. (Part 2) 586, 620, 622) 43
S. Rep. No. 665, 72d Cong., 1st Sess., p. 58 (1939–1 Cum. Bull. (Part 2) 496, 538) 15
S. Rep. No. 960, 70th Cong., 1st Sess., pp. 18, 33, 36–37, 43 (1939–1 Cum. Bull. (Part 2) 409, 421, 432, 434–435, 439) 18, 41, 43
S. Rep. No. 1137, 67th Cong., 4th Sess., pp. 1, 6 (1939–1 Cum. Bull. (Part 2) 848, 853) 25, 47
S. Rep. No. 1240, 74th Cong., 1st Sess., pp. 12–13 (1939–1 Cum. Bull. (Part 2) 651, 659) 41
S. M. 1712, III–1 Cum. Bull. 345 (1924) 35
S. M. 2293, III–2 Cum. Bull. 310 (1924) 27, 35
Sol. Op. 79, 3 Cum. Bull. 302, 306 (1920) 22
Statement of the Changes Made in the Revenue Act of 1921 by H. R. 6715 and the Reasons Therefor, Senate Committee Print, 68th Cong., 1st Sess., March 6, 1924, p. 37 29
T. D. 3416, I–2 Cum. Bull. 228 (1922) 22
T. D. 3457, II–1 Cum. Bull. 177 (1923) 35
T. D. 3462, II–1 Cum. Bull. 180 (1923) 35
T. D. 3251, 5 Cum. Bull. 245 (1921) 12
Treasury Form 843 (Rev. April 1940) 34
Treasury Regulations 62, Art. 1036 33
Treasury Regulations 65:
Art. 1306 33
Art. 1307 33
Treasury Regulations 69:
Art. 1304 33
Art. 1305 33
Treasury Regulations 74:
Art. 1254 33
Art. 1257 33
Treasury Regulations 77:
Art. 1254 33
Art. 1257 33
Treasury Regulations 86:
Art. 322-3 33
Art. 322-7 33

Miscellaneous—Continued
Page
Treasury Regulations 94:
Art. 322–3 33
Art. 322–7 33
Treasury Regulations 101:
Art. 322–3 ..... 5, 33
Art. 322–7 ..... 5, 33
Treasury Regulations 103:
Art. 19.322–3 ..... 5, 33
Art. 19.322–7 ..... 5, 33
Treasury Regulations 111:
Sec. 29.322–3 ..... 4, 33
Sec. 29.322–7 ..... 5, 33

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 71

H. C. JONES, COLLECTOR OF INTERNAL REVENUE, PETITIONER

v.

THE LIBERTY GLASS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the District Court (R. 12–17) is reported in 66 F. Supp. 254. The opinion of the Circuit Court of Appeals (R. 20–23) and the dissenting opinion (R. 23–27) are reported in 159 F. 2d 316.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on January 21, 1947. (R. 27.) The petition for a writ of certiorari was filed on April 18, 1947, and was granted on June 2, 1947. (R. 28.) The jurisdiction of this Court is invoked under Sec-

764869—47——2

tion 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether claims for refund of income taxes must be filed within two years after the payment of the tax, as provided by Section 322 (b) of the Revenue Act of 1938 and the Internal Revenue Code, or within four years after the payment of the tax, as provided by Section 3313 of the Internal Revenue Code.

STATUTES AND REGULATIONS INVOLVED

Internal Revenue Code:

SEC. 322. REFUNDS AND CREDITS.

(a) *Authorization.*—

(1) *Overpayment.*—Where there has been an overpayment of any tax imposed by this chapter [i. e., chapter 1, which deals only with income taxes], the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer.

* * * * *

(b) *Limitation on Allowance.*—

(1) *Period of Limitation.*—Unless a claim for credit or refund is filed by the taxpayer within three years from the time the return was filed by the taxpayer or *within two years from the time the tax was paid*, no credit or refund shall be allowed or made after the expiration of whichever

of such periods expires the later. If no return is filed by the taxpayer, then no credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer. [Italics supplied.]

* * * * * * *

(26 U. S. C. 1940 ed., Supp. V, Sec. 322.)

[The provisions of Section 322 (a) and (b) (1) of the Revenue Act of 1938 correspond in all material respects with the provisions of Section 322 (a) (1) and (b) (1) of the Internal Revenue Code.]

SEC. 3313. PERIOD OF LIMITATION UPON REFUNDS AND CREDITS.

All claims for the refunding or crediting of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, *except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes,* be presented to the Commissioner within four years next after the payment of such tax, penalty, or sum. The amount of the refund (in the case of *taxes other than income,* war-profits, excess-profits, estate, and gift taxes) shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim,

or if no claim was filed, then during the four years immediately preceding the allowance of the refund. [Italics supplied.] (26 U. S. C. 1940 ed., Sec. 3313.)

Treasury Regulations 111, promulgated under the Internal Revenue Code:

SEC. 29.322–3. CLAIMS FOR REFUND BY TAXPAYERS.—Claims by the taxpayer for the refunding of taxes, interest, penalties, and additions to tax erroneously or illegally collected shall be made on Form 843, and should be filed with the collector of internal revenue. A separate claim on such form shall be made for each taxable year or period.

The claim must set forth in detail and under oath each ground upon which a refund is claimed, and facts sufficient to apprise the Commissioner of the exact basis thereof. No refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed prior to the expiration of such period. A claim which does not comply with this paragraph will not be considered for any purpose as a claim for refund. With respect to limitations upon the refunding or crediting of taxes, see section 29.322–7.

* * * * * *

SEC. 29.322–7. LIMITATIONS UPON THE CREDITING AND REFUNDING OF TAXES PAID.—(a) *General rule.*—Unless a claim for

credit or refund of an overpayment is filed within three years from the time the return was filed by the taxpayer or within two years from the time the tax was paid, the Commissioner is prohibited from allowing or making a credit or refund of income tax imposed by chapter 1 for such year after both periods have expired. If no return is filed by the taxpayer, the Commissioner is prohibited from allowing or making a credit or refund of such tax after two years from the time the tax was paid unless before the expiration of such 2-year period a claim therefor is filed. * * *[1]

STATEMENT

The facts as shown by the pleadings (R. 1–10) and the stipulation of facts (R. 11–12), and as found by the District Court (R. 13–14), may be summarized as follows:

The taxpayer is an Oklahoma corporation. (R. 11.) After having obtained an extension of time, the taxpayer on June 15, 1939, filed its corporation income and excess profits tax return for the calendar year 1938, which disclosed a taxable net income of $9,058.90 and indicated a total liability of $1,193.25, which it paid in 1939. (R. 11.) An additional assessment of $158.53 was also paid in

[1] Insofar as pertinent Sections 19.322–3 and 19.322–7, as amended by T. D. 5256, 1943 Cum. Bull. 550, Regulations 103 promulgated under the Internal Revenue Code, and Articles 322–3 and 322–7, Regulations 101, promulgated under the Revenue Act of 1938, are similar to the foregoing provisions.

1939. (R. 11.) Neither the original tax nor the additional tax mentioned is involved in this action.

Subsequent to the filing of the return and the additional assessment, a revenue agent's investigation of the taxpayer's income tax liability resulted in a further assessment in the amount of $7,992.59, and, after this amount was reduced for amounts previously paid, $6,640.81 remained due and was paid on March 8, 1941. (R. 11–12.) In the computation of this additional tax, certain adjustments were made, to none of which the taxpayer takes exception in this case. (R. 4–8, 11–12.)

On March 30, 1944, the taxpayer filed a claim for refund of $1,053.49, on the ground that during the year 1938, the taxpayer paid sums aggregating $75,191.78 on indebtedness of the corporation within the meaning of Section 27 (a) (4) of the Revenue Act of 1938, c. 289, 52 Stat. 447, and that it was entitled to credit for such payments in an amount equal to two and one-half percent of its adjusted net income, or $1,053.49, and that failure to allow such credits was erroneous. (R. 3–8, 12.) The taxpayer stated in the claim that it was relying on the four-year limitation period provided in Section 3313 of the Internal Revenue Code. (R. 6.) The claim was rejected by the Commissioner of Internal Revenue in a letter in which it was pointed out that Section 3313 spe-

cifically exempts from its application income, war-profits, excess profits, estate and gift taxes. (R. 8–9, 12.)

This suit was then brought to recover the amount alleged by the refund claim to be due. (R. 1–9.) It was expressly stipulated that under the applicable revenue law, the taxpayer was required to file a corporation income and excess-profits tax return for the taxable year 1938. (R. 11.)

The Collector filed a motion to dismiss the complaint and for judgment on the pleadings (R. 10), which was overruled by the District Court (R. 17). Judgment was entered for the plaintiff (R. 17–18), and the Circuit Court of Appeals for the Tenth Circuit affirmed (R. 20–23), with Judge Huxman dissenting (R. 23–27).

SPECIFICATION OF ERRORS TO BE URGED

The court below erred:

1. In holding that claims for refunds of erroneous assessments of income taxes are governed by the limitation provisions of Section 3313 of the Internal Revenue Code.

2. In holding that Section 322 (b) of the Internal Revenue Code [or of the Revenue Act of 1938] is not applicable to refund claims based on erroneous assessments of income taxes.

3. In affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

The word "overpayment" as used in Section 322 and throughout the Internal Revenue Code refers to any excess amount paid by a taxpayer and thereafter determined not to have been owed to the Government. No support can be found to justify the distinction drawn by the court below between "overpayments" and "taxes erroneously or illegally assessed or collected". The statutory development and legislative history of Section 322 and Section 3313 of the Internal Revenue Code show clearly the Congressional intent that all claims for refund of income taxes are excluded from the provisions of Section 3313 and are governed by the provisions of Section 322. This view is in accord with a consistent, unambiguous and long-established administrative interpretation expressed in Treasury Regulations issued under every Revenue Act since 1924 and in numerous rulings and Treasury decisions. It accords also with expressions of this and lower courts in numerous cases.

The meaning attributed to the term "overpayment" by the decision below if consistently applied to other sections of the Internal Revenue Code would produce incongruous and harsh results. The payment of interest on refunds of erroneous assessments of tax would be without statutory sanction; the jurisdiction of the Tax Court would be curtailed; and other anomalous results would follow.

The result below finds support in a small number of comparatively recent lower court decisions, beginning with *Huntley* v. *Southern Oregon Sales*, 102 F. 2d 538 (C. C. A. 9), all of which fail to give proper recognition to the legislative history, the structure of the statute, and the administrative practice. There is no basis whatever for the conclusion that these decisions have received legislative acquiescence.

ARGUMENT

THE TAXPAYER'S CLAIM FOR REFUND IS BARRED BY THE STATUTE OF LIMITATIONS AS PRESCRIBED IN SECTION 322 (b)

Preliminary analysis.—This suit was brought by the taxpayer to recover income and excess profits taxes for the year 1938, which it had paid on March 8, 1941. However, the claim for refund upon which this suit is based was not filed until March 30, 1944, more than two years after payment. The Commissioner rejected the claim on the ground that it was barred by limitations. Section 322 (b) (1) of the Revenue Act of 1938, here involved, provides that unless a claim for "refund is filed by the taxpayer within * * *[2] two years from the time the tax was paid", no refund shall be allowed. The taxpayer, on the

[2] The omitted language gives the taxpayer an alternative period of three years from the time the return was filed. However, since the return in this case was filed in June 1939 (R. 11), no contention has ever been made here that the 1944 claim for refund was timely under that alternative period.

other hand, contends that the applicable period of limitations is four years from the date of payment, as provided in Section 3313 of the Internal Revenue Code. In contrast to Section 322, which relates exclusively to income and excess profits taxes, Section 3313 contains limitations provisions which relate to federal taxes generally. Section 3313 provides as follows:

> All claims for the refunding or crediting of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, *except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes,* be presented to the Commissioner within four years next after the payment of such tax, penalty, or sum. * * * [Italics supplied.]

Thus, the four-year period of limitations is applicable, "except as otherwise provided by law in the case of income, war-profits, excess-profits * * * taxes." And in the case of income and excess-profits taxes,[3] provision is "otherwise" made in Section 322, which requires that the claim for refund be presented within two years of payment.

---

[3] In the case of estate and gift taxes provision is "otherwise" made in Sections 910 and 1027 of the Internal Revenue Code.

In ruling that the two-year period in Section 322 was inapplicable, the court below noted that Section 322 dealt with "overpayments" of taxes, whereas Section 3313 speaks of taxes "erroneously or illegally assessed or collected"; and the court concluded that Section 322 was intended merely to "govern overpayments resulting from errors occurring in the preparation of the return, or in other somewhat similar circumstances" (R. 21). Accordingly, it held that the refund here sought is based on a tax "erroneously or illegally" assessed, and not on an "overpayment", with result that the four-year period in Section 3313 was applicable rather than the two-year period in Section 322. We respectfully submit that there is not the slightest basis for any such distinction between an "overpayment" and a tax "erroneously or illegally assessed", either in the legislative history, the structure of the statute, or the administrative practice. To the contrary, the legislative history is clear that Section 322 was intended to establish an entirely separate and self-contained statute of limitations for the recovery of income taxes, and the very language of Section 3313 explicitly recognizes these special provisions. A great multitude of cases have proceeded upon this assumption, and the statute has been consistently so administered by the Treasury. The word "overpayment" is simply a comprehensive term embracing every kind of payment in excess of what the taxpayer owed. The distinction adopted by the court below is wholly unwarranted.

A. The term "overpayment" as used in Section 322 includes taxes alleged to have been "erroneously or illegally assessed or collected"

There is nothing in the use of the word "overpayment" which excludes from its meaning an overpayment made because the tax was "erroneously or illegally assessed". The word "overpayment" is merely a convenient term—generic in character—expressing in ordinary language the idea of any amount paid by a taxpayer in excess of what may later be determined to have been owing to the Government. It matters not whether the error giving rise to the payment was mathematical, or one of judgment, or an erroneous interpretation of the facts or the Regulations or the law, or whether made by the taxpayer or the Commissioner. The ultimate question is whether the taxpayer has *paid* to the Government an amount *over* and above his true liability.[4]

This Court has frequently expressed this idea. In *Lewis* v. *Reynolds*, 284 U. S. 281, the following statement of the lower court is quoted (p. 283):

> The above quoted provisions clearly limit refunds to overpayments. It follows that the ultimate question presented for decision, upon a claim for refund, is whether the taxpayer has overpaid his tax. This involves a redetermination of the entire tax liability. * * * The action to re-

[4] *Cf.* T. D. 3251, 5 Cum. Bull. 245 (1921).

> cover on a claim for refund is in the nature of an action for money had and received, and it is incumbent upon the claimant to show that the United States has money which belongs to him.

The opinion then added (p. 283):

> We agree with the conclusion reached by the courts below.
>
> * * * An overpayment must appear before refund is authorized. Although the statute of limitations may have barred the assessment and collection of any additional sum, it does not obliterate the right of the United States to retain payments already received when they do not exceed the amount which might have been properly assessed and demanded.

The sections then under consideration were Section 284, Revenue Act of 1926, c. 27, 44 Stat. 9, and Section 322, Revenue Act of 1928, c. 852, 45 Stat. 791, the precursors of Section 322, Internal Revenue Code. In *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, Mr. Justice Cardozo discussed the general concept of overpayment as follows (p. 69):

> The respondent filed a claim for taxes overpaid, a claim for money had and received to his use by the agents of the government. The identity of the cause of action may be said in one aspect to depend upon *the mere fact of overpayment*, the existence of a net balance owing to the taxpayer after the

> ascertainment *of all items* of debit and of credit. In another aspect it may be said to depend upon the identity of the *items illegally exacted,* and hence upon the particular grounds that determine illegality. [Italics supplied.]

Thus, this Court recognized that items "illegally exacted" are included within the term "overpayment".[5]

Judge Huxman dissenting below fully adhered to this view (R. 25):

> The word "overpayment" is not a word of art, but a word having a general meaning. In general, payment may be defined as a satisfaction of an obligation by the delivery of or transfer of that which is due. So, overpayment may be defined as a payment or delivery of more than is due. Whether the payment results from an error on the part of taxpayer in making and filing his return or from erroneous assessments by the Collector when made, it is an overpayment or a payment of more than is due.

Not only does the term "overpayment" as used in Section 322 support our position, but so too does the very structure of Section 3313. The first sentence of Section 3313 spells out the general four-year period, "except as otherwise provided by law in the case of income * * *

[5] See also *United States* v. *Henry Prentiss & Co.*, 288 U. S. 73, 83, 84–85.

taxes". The second sentence of Section 3313 deals with the *amount* of refund, and provides:

> The amount of the refund (in the case of taxes other than income, war-profits, excess-profits, estate, and gift taxes) shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund.

Thus, the amount of refund may not exceed the amount paid during the four-year period. But the words in the parenthesis show that this provision has no application to income taxes.[6] Thus, if the court below is correct, there would be no limitation whatever on the amount of refund of income taxes illegally collected; for, Section 3313 explicitly excludes income taxes, and according to the ruling of the court below they would not be "overpayments" subject to the limitations of Section 322. Yet, the legislative history[7] cannot

---

[6] See S. Rep. No. 665, 72d Cong., 1st Sess., p. 58 (1939–1 Cum. Bull. (Part 2) 496, 538); H. Conference Rep. No. 1492, 72d Cong., 1st Sess., p. 29 (1939–1 Cum. Bull. (Part 2), 539, 553): "Amendment No. 261: Under this amendment a refund of *miscellaneous* taxes can not exceed the amount of the tax paid during the four years immediately preceding the filing of the claim, or, if no claim is filed, then during the four years immediately preceding the allowance of the refund. * * *" (Italics supplied.)

[7] S. Rep. No. 398, 68th Cong., 1st Sess., p. 33 (1939–1 Cum. Bull. (Part 2) 266, 289; H. Conference Rep. No. 844, 68th

support such a result and the administrative practice[8] has restricted the amount of the refund of an erroneous income tax assessment to that permitted by Section 322.

In addition to the language used in Sections 322 and 3313 which we submit sufficiently demonstrates the error of the decision below, the use of the term "overpayment" in numerous other sections of the Internal Revenue Code would be inexplicable if the basis of the decision were to be applied consistently to them. Such sections as Sections 781 (b), 3779 (i), 3780 (b), 3807 (b) of the Code and Sections 457 and 501 (c) of the Revenue Act of 1942—and perhaps more especially, the broad relief provisions of Sections 322 (b) (5) and 322 (g) of the Code—would require reasons far more subtle and persuasive than that which the court below gives to explain the use therein of the term "overpayment".

The reason for the inclusion in the revenue laws of more than one section establishing limitations on the filing of refund claims is not because of the distinction drawn by the court below, but by

---

Cong., 1st Sess., pp. 24–25 (1939–1 Cum. Bull. (Part 2) 300, 308).

[8] *Cf. Brewer* v. *National Life & Acc. Ins. Co.*, 119 F. 2d 313, 315 (C. C. A. 6th); *United States* v. *Garbutt Oil Co.*, 302 U. S. 528; *A. S. Kreider Co.* v. *United States*, 117 F. 2d 133 (C. C. A. 3d), reversed on other grounds, 313 U. S. 443. In each of these cases, and those cited in the *Brewer* opinion, consistent administrative action is apparent.

the separate treatment * provided throughout the revenue laws for income, profits, estate and gift taxes as distinguished from those known as "Miscellaneous" and "Excise, Import and Temporary"

* Examples of such separate treatment for income, profits, gift and estate taxes may be found in the following sections of the Code: Sections 322, 871 and 1012 conferring jurisdiction in the Tax Court over such taxes; Section 3777 providing for review by the Joint Committee on Internal Revenue Taxation of refunds authorized in excess of $75,000; Section 3801, providing for certain mitigation of the statute of limitations in income tax cases; Section 3804 (a) (1) (A), (B) and (C), extending the time for filing returns, making payment, or filing Tax Court petitions in respect of such taxes; Section 3807, extending the period of limitations for income and profits taxes; Section 1116 (a) (2), Revenue Act of 1926 defining the expression "date of the allowance of the refund"; *cf.* the separate revision of the income tax tile in 1928. Report of the Joint Committee on Internal Revenue Taxation (1928) Vol. II: Proposed Rearrangement of Income Tax Title.

Separate titles for income taxes as distinguished from miscellaneous taxes have always been found in the Revenue Acts since 1916. Title I of that Act, c. 463, 39 Stat. 756, for example, encompassed all provisions for the levying, assessment and collection of income taxes. A separate title (IV) was provided for miscellaneous taxes. Similarly, the use of separate titles within the Revenue Acts continued through all the Revenue Acts until their codification in the Internal Revenue Code. Although it is recognized that no inference may properly be drawn from the arrangement of the Code itself (see Section 6, Act of February 10, 1939, c. 2, 53 Stat. 1, codifying the Internal Revenue laws), the following explanation by the House Ways and Means Committee of the arrangement of the Code is significant (H. Rep. No. 6, 76th Cong., 1st Sess., pp. 3–4 (1939–2 Cum. Bull. 532, 534)):

764869—47——4

taxes.[10] Such separate treatment is based upon broad considerations of administrative convenience and necessity. The difficulty of auditing the vast number of income tax returns as compared

---

The final step was to arrange the code in a logical and convenient manner. There are six subtitles. Subtitle A contains those taxes over which the United States Board of Tax Appeals has jurisdiction. These include income, estate, and gift taxes.

Subtitle B contains the miscellaneous taxes.

Subtitle C contains the temporary taxes.

Subtitle D contains the general administrative provisions.

Subtitle E contains the personnel provisions.

Subtitle F contains provisions relating to the Joint Committee on Internal Revenue Taxation.

The purpose of this arrangement is to make the subtitles as far as possible complete in themselves. For example, those interested solely in provisions relating to income, estate, or gift taxes need concern themselves only with subtitles A and D, and may disregard the provisions relating to tobacco, liquor, and other miscellaneous taxes, which are included in subtitle B, as well as the provisions relating to temporary taxes, in subtitle C. In subtitle D, all general administrative provisions have been collected.

Cf. H. Rep. No. 2, 70th Cong., 1st Sess., pp. 11–12 (1939–1 Cum Bull. (Part 2) 384, 391–392; S. Rep. No. 960, 70th Cong., 1st Sess., p. 18 (1939–1 Cum. Bull. (Part 2) 409, 421; H. Conf. Rep. No. 1882, 70th Cong., 1st Sess., p. 21 (1939–1 Cum. Bull. (Part 2) 444, 452).

[10] There are more than twenty such taxes now in existence. They are imposed by Chapters 6–28 of Subtitle B—Miscellaneous Taxes, on such varied subjects as: Alaskan Railroads (Section 1300); admissions and dues (Section 1700); documents, other instruments and playing cards (Section 1800); safe deposit boxes (Section 1850); bank circulation (Section 1900); cotton futures (Section 1920); tobacco, snuff, cigars and cigarettes (Section 2000); oleo-

with those required for miscellaneous taxes explains the numerous revisions of the assessment and refund sections governing income taxes although the miscellaneous tax sections remained relatively stable."

---

margarine (Section 2300); filled cheese (Section 2350); retailers excises (Section 2400); coconut and other vegetable oils (Section 2470); fish, animal and vegetable oils (Section 2490); narcotics (Section 2550); white phosphorous matches (Section 2650); firearms (Section 2700); liquor (Section 2800); occupations (Section 3200); manufacturers excises (Section 3400); transportation and communication (Section 3460); transfers and conveyances (Section 3481); sugar (Section 3490); bituminous coal (Section 3520).

[11] House Hearings on Revenue Act of 1918, 65th Cong., 2d Sess., pp. 120–121. Separate treatment of income tax refunds first appeared in Section 14 (a), Revenue Act of 1916, c. 463, 39 Stat. 756. The section was modified by Section 252, Revenue Act of 1918, c. 18, 40 Stat. 1057. Subsequent amendments and revisions appeared in Section 252, Revenue Act of 1921, c. 136, 42 Stat. 227; the Act of March 4, 1923, c. 276, 42 Stat. 1504, Sec. 1; the Act of March 13, 1924, c. 55, 43 Stat. 22; Section 281, Revenue Act of 1924, c. 234, 43 Stat. 253; the Act of March 3, 1925, c. 435, 43 Stat. 1115; Section 284, Revenue Act of 1926, c. 27, 44 Stat. 9; Section 322, Revenue Act of 1928, c. 852, 45 Stat. 791; Section 2, Joint Resolution of June 16, 1930, c. 495, 46 Stat. 589; Section 322 of the Revenue Act of 1932, c. 209, 47 Stat. 169, the Revenue Act of 1934, c. 277, 48 Stat. 680, the Revenue Act of 1936, c. 690, 49 Stat. 1648, the Revenue Act of 1938, c. 289, 52 Stat. 447, and of the Internal Revenue Code; Sections 169 and 172 (e) (1), Revenue Act of 1942, c. 619, 56 Stat. 798; Section 4 (a), Current Tax Payment Act of 1943, c. 120, 57 Stat. 126; Section 6 (b), (9) and (10), Individual Income Tax Act of 1944, c. 210, 58 Stat. 231; and Section 5, Tax Adjustment Act of 1945, c. 340, 59 Stat. 517.

B. The legislative history of Sections 322 and 3313 conclusively supports the Government's position

An examination of the legislative development of the refund sections clearly shows that the Government's position is in harmony with the understanding and intention of Congress.

Prior to the Revenue Act of 1916 (the first Revenue Act to contain a separate income tax title) claims for refund of any internal revenue tax "erroneously or illegally assessed or collected" were required to be presented within two years after the cause of action accrued. Section 3228, Revised Statutes (Appendix, *infra*). Section 14 (a) of the Revenue Act of 1916 removed income taxes from the limitation period of Section 3228 of the Revised Statutes [the predecessor of Section 3313 of the Code] by the following provision exempting all income taxes from its scope:

> * * * upon the examination of any return of income made pursuant to this title [the income tax title], * * * if it shall appear that amounts of tax have been paid in excess of those properly due, the taxpayer shall be permitted to present a claim for refund thereof notwithstanding the provisions of section thirty-two hundred and twenty-eight of the Revised Statutes * * *.

Thus began the statutory scheme of separate treatment for income taxes different from others.

Section 252 of the Revenue Act of 1918 con-

tinued this scheme of separate treatment but reinstated a restriction on refund claims by inserting a specific period of five years from the date the return was due for filing such claims. The limitation was applicable to claims which arose whenever—

> it appears that an amount of income, war-profits or excess-profits tax has been paid in excess of that properly due.

This coincided with the assessment and collection limitation of five years in Section 250 (d) which operated against the Government.

The Revenue Act of 1921 reenacted the provisions of Section 252 with changes not here relevant. The five year limitation (from the date when the return was due) was continued. Revised Statutes, Section 3228, however, was amended by Section 1316 of the 1921 Act to require claims for refund of any internal revenue tax "erroneously or illegally assessed or collected" to be presented within four years after payment. The sole effect of this amendment was to change the limitation period which had theretofore been two years after the cause of action accrued.[12] It

---

[12] S. Rep. No. 275, 67th Cong., 1st Sess., pp. 21–22 (1939–1 Cum. Bull. (Part 2) 181, 196).

Section 1316 also added a sentence to conform Section 3228 with the reference to it in Section 252. This sentence read—

"This section, except as modified by section 252, shall apply retroactively to claims for refund under the Revenue Act of 1916, the Revenue Act of 1917, and the Revenue Act of 1918."

may be noted that the term "overpayment" did not appear in Section 252 of this Act.

At this point, therefore, Section 252 governed claims for refund of income, war-profits or excess-profits taxes "paid in excess of that properly due". Section 3228 governed claims for refund of any internal revenue tax "erroneously or illegally assessed or collected".

However, because the limitation period for income taxes was computed from the date the return was due there arose situations when the taxpayer, having waived the statute of limitations against assessment by the Commissioner, paid the assessed tax only to find that the period of limitations on refund claims had expired leaving him without any opportunity whatever to claim a refund. The Treasury Department recognized the unfairness of such a situation and construed Section 252 and Section 3228 together so that there would remain four years after the payment of the tax within which the taxpayer's claim for refund might be filed.[13]

But this interpretation was recognized to be of doubtful legality. Accordingly in 1923, Secretary of the Treasury Mellon proposed to the Chairman of the House Ways and Means Committee that certain changes be made in Section 252 of the Revenue Act of 1921 and in a letter

[13] T. D. 3416, I-2 Cum. Bull. 228 (1922); I. T. 1269, I-1 Cum. Bull. 311 (1922), *Cf.* Sol. Op. 79, 3 Cum. Bull. 302, 306 (1920); Mim. 2764, 4 Cum. Bull. 332 (1921); L. O. 1093, I-1 Cum. Bull. 319 (1922).

offered the following explanation of the need for the changes (H. Rep. No. 1424, 67th Cong., 4th Sess., p. 2 (1939–1 Cum. Bull. (Part 2) 848, 849–850)):

> Section 252 of the revenue act of 1921 provides that no credit or refund of income, war-profits or excess-profits taxes shall be allowed after five years from the date when the return was due unless before the expiration of such five years a claim therefor is filed by the taxpayer. Section 3228 of the Revised Statutes, as amended by section 1315 [*sic*] of the revenue act of 1921, provides that a claim for the refunding or crediting of any internal-revenue tax erroneously or illegally collected must be presented to the Commissioner of Internal Revenue within four years after the payment of such tax. The present ruling of the Treasury Department is that section 252 of the revenue act of 1921 and section 3228 of the Revised Statutes should be read together, and that a refund or credit of income, war-profits or excess-profits taxes erroneously or illegally collected may be made if claim therefor was filed within four years after the tax was paid although not within five years after the return was due. The necessity for a provision allowing the filing of a claim within a given period after the tax is paid, even though not within five years after the return was due, is apparent. In the case of an *additional assessment* of income, war-profits or excess-profits taxes after the expiration of

> the five-year period from the time when the return was due, which is permissible in cases where the taxpayer has waived his rights under the statute of limitations, such assessment would be final when made and the taxpayer would be barred from filing a claim for refund even to form the basis for a suit at law for the recovery of the taxes paid. *The existing ruling* of the Treasury Department, allowing a taxpayer to file a claim within four years after the tax is paid even though not within the five-year period after the return was due, *is of very doubtful legality,* and consequently it is deemed advisable to clarify the situation by means of legislation, and provide unequivocally that a claim for refund or credit [14] may be considered by the Department if filed within a given period after the tax was paid even though not within five years from the time the return was due. (Italics supplied.)

The House Ways and Means Committee recommended the change as requested by the Secretary of the Treasury. The Committee Report, after reproducing the Mellon letter, continued as follows:

> The purpose and effect of the bill is very clearly shown in the letter of the Secretary of the Treasury set out above. The committee concurs in the reasoning of the Secretary as to the necessity of making the

[14] "Of an erroneous or illegal assessment," clearly is the meaning.

> law definite so that the taxpayer who has, by agreement with the Treasury, permitted the time for the final assessment of the taxes due from him to be made after the expiration of the five-year period, will not be barred from making a claim for a refund when such assessment is made and the taxpayer *alleges that the assessment is illegal.* While the Treasury Department is now permitting this to be done as a matter of common justice, the legal right to do so is questionable. The committee believes that it is not necessary that the taxpayer should have four years after such a payment had been made and considers one year sufficient. That amount of time is accordingly given by the bill to the taxpayer after the payment in which to make his claim for a refund. [Italics supplied.]

The Senate Finance Committee adopted the House Report (S. Rep. No. 1137, 67th Cong., 4th Sess., p. 1 (1939–1 Cum. Bull. (Part 2) 848)), and the amendment was passed and became law.[14a] See Act of March 4, 1923, Appendix, *infra.*

This Congressional purpose, that is, permitting claims for refund of income taxes "erroneously or illegally" collected to be filed within two years after the tax was paid, in addition to the period after the due date on the return, was effected by inserting *within Section 252,* as it appeared in the Revenue Act of 1921, the following clause:

[14a] The Senate changed the period from one year as passed by the House to two years and this change was agreed upon in conference. H. Conference Rep. No. 1757, 67th Cong., 4th Sess. (1939–1 Cum. Bull. (Part 2) 856).

"* * * or unless before the expiration of two years from the time the tax was paid a claim therefor is filed by the taxpayer". (S. Rep. No. 1137, 67th Cong., 4th Sess., p. 6 (1939–1 Cum. Bull. (Part 2) 848, 853)). The importance of amending the Act in this manner, by changing Section 252, without making a change in Section 3228 of the Revised Statutes to accomplish the named purpose is most important, for the conclusion becomes inescapable that Section 252, although referring in terms only to "excess" payments, was intended also to govern claims for refund of taxes "erroneously or illegally" collected. Moreover, if the distinction made by the court below were valid, there would have been no need for such an amendment, since there would have been no doubt that claims for refund of income taxes "erroneously or illegally" collected would be governed by the provisions of Section 3228 of the Revised Statutes, and the limitation period would run from the time of payment as there provided. This, then is a clear expression of Congressional intent that Section 252, as amended, should govern claims for refund of income taxes erroneously or illegally assessed.[15]

[15] The taxpayer urged in the court below that the plain language used by the Secretary of the Treasury and the House and Senate Committees must be wholly disregarded because Section 1 (b) of the Act of March 4, 1923, Appendix, *infra*, amending Section 252 made mention of refunds of income taxes to withholding agents which might be made under "section 3228 of the Revised Statutes". Without further explanation so incidental a reference on a different though re-

And this Court so held in *Graham* v. *duPont*, 262 U. S. 234, decided May 21, 1923, within three months after the 1923 amendment. In that case the taxpayer sought to enjoin the collection of income tax (alleged to be illegally assessed) on the ground that, if paid, Section 252 would preclude recovery. The Court rejected the taxpayer's contention saying (p. 258):

> It is certain that by the amendments to § 252 and § 3226, Rev. Stats., by the Act of March 4, 1932, c. 276, 42 Stat. 1504, the complainant is given the right now to pay the tax, and sue to recover it [the illegal assessment] back * * *.

---

lated problem should scarcely be interpreted as requiring the disregard of all else appearing in the Committee Reports. Moreover, the simple answer is that the amendment was retroactively applied to those refund claims filed prior to March 4, 1923, which, under the administrative practice prior thereto (referred to as of "doubtful legality" in the Mellon letter, *supra*) were permitted to be filed within the time limitation of Section 3228, Revised Statutes. Therefore, as to claims pending on March 4, 1923, which were timely filed under Section 3228 although not timely under Section 252, as amended, refunds to withholding agents as contemplated by Section 1 (b) of the Act of March 4, 1923, were necessarily made under Section 3228. *Cf.* S. M. 2293, III–2 Cum. Bull. 310 (1924). Furthermore, whatever may have been the significance of the phrase as then used, it was omitted in all later Revenue Acts which make the same provision for such refunds. Section 281, Revenue Act of 1924; Section 284, Revenue Act of 1926; Section 144 (f), Revenue Act of 1928; Section 143 (f) of the Revenue Act of 1932, the Revenue Act of 1934, the Revenue Act of 1936, the Revenue Act of 1938 and the Internal Revenue Code. *Cf. American Hide & L. Co.* v. *United States*, 284 U. S. 343, 350.

Unquestionably, therefore, at least after the 1923 amendment to Section 252 that section was intended to be exclusive as to income taxes, whether "erroneously or illegally" collected or not.

When Congress considered the contemplated Revenue Act of 1924, A. W. Gregg of the Treasury Department, who was in charge of the group which drafted the new bill, appeared before the House Ways and Means Committee and Senate Finance Committee to explain the proposed bill.[16] Each section of the bill was analyzed separately. After reading the text of Section 281 (a), and stating that it in effect was the same as existing law, Mr. Gregg then proceeded to read and explain the next subsection as follows (p. 42):

> "(b) Except as provided in subdivisions (c) and (d) no such credit or refund shall be allowed or made after four years from the time the tax was paid, unless before the expiration of such four years a claim therefor is filed by the taxpayer."
>
> As it is now, the period of limitation on the filing of a claim for a refund is very complicated. It is five years from the time the return was due or two years from the time the tax was paid, either one. It seemed to the department and to the House that the proper time for the statute to begin running is the time that the tax was paid, because that is the time when the

[16] Senate Hearings on Revenue Act of 1924, 68th Cong., 1st Sess., pp. 2–57.

right of action for recovery accrued; and four years is the same period that we put on the Government's right to assess.

Senator WATSON. Instead of two?

Mr. GREGG. It is now five years from the time the return was due or two years from the time the tax was paid, both. * * *

This explanation is in effect repeated in the "Gregg Statement" (Statement of the Changes Made in the Revenue Act of 1921 by H. R. 6715 and the Reasons Therefor, Senate Committee Print, 68th Cong., 1st Sess., March 6, 1924) where the amendment to Section 3228 of the Revised Statutes by Section 1012 (a) of the proposed revision was discussed. That amendment, which reworded and changed the location of the exceptive clause of Section 3228, so that it read almost as it does now in Section 3313 of the Code, is explained thus (p. 37):

> Subdivision (a) has been changed only by specifically excepting the cases provided for in section 281 of the bill, in lieu of the present exception of those provided for in section 252 of the existing law. Section 281 of the bill, with reference to refunds [N. B. The reference is to "refunds" and not "overpayments".] of income taxes, corresponds in subject matter to section 252 of the existing law; the changes in its provisions are noted under section 281 *supra*. The exception has also been reworded to remove the doubt which now exists as to whether or not the provisions of section

3228, Revised Statutes, apply in any event to income taxes.

This was quoted verbatim by the House Ways and Means and Senate Finance Committees as their explanation of the amendment, H. Rep. No. 179, 68th Cong., 1st Sess., pp. 70–71 (1939–1 Cum. Bull. (Part 2) 241, 264–265); S. Rep. No. 398, 68th Cong., 1st Sess., p. 44 (1939–1 Cum. Bull. (Part 2) 266, 296).[17]

Thus, in addition to this Court's decision in the *duPont* case, *supra*, the clear evidence of the Treasury's understanding of the 1923 amendment and Congress' understanding of that amendment

---

[17] See also *Hills* v. *United States*, 50 F. 2d 302 (C. Cls.), and *United States* v. *Clarke*, 69 F. 2d 748 (C. C. A. 3d), certiorari denied, 293 U. S. 564.

A proposed subsection (d), permitting income tax refund claims to be filed despite the bar of the statute of limitations whenever a decision of the Supreme Court held invalid a Treasury Regulation under which the tax was assessed, was met with the suggestion that the amendment be made more inclusive (Senate Hearings, *supra*, p. 45):

"Senator Watson. Senator McCumber was up here yesterday and talked to me and other Senators on this very section. He wanted the words "or other internal revenue tax" inserted after the words "excess-profits tax"; in other words, if the Supreme Court declared any tax illegal which had been collected, why, then, there ought to be a refund. It ought not to be confined alone to excess-profits taxes or war taxes. There ought to be a refund.

"Mr. Gregg. Senator Watson, this section deals only with incomes, war-profits, or excess-profits taxes. That would more properly come in section 3228, Revised Statutes."

This provision, however, was stricken by the Senate Finance Committee and never adopted. S. Rep. No. 398, 68th Cong., 1st Sess., p. 34 (1939–1 Cum. Bull. (Part 2) 266, 289)

and the 1924 revision, we also have the underlying corroborative testimony from the draftsman of that revision[18] (in which, it may be emphasized, the term "overpayment" first appeared in the section under consideration). Non-Congressman though he was his understanding carries the stamp of authority. *Cf. United States* v. *Amer. Trucking Ass'ns.*, 310 U. S. 534, 547–548.

The changes in the status subsequent to the Revenue Act of 1924, Appendix, *infra*, are in harmony with the amendments just analyzed and tend to support our position. (See especially the addition of the second sentence to Section 3228, Revised Statutes, by the Revenue Act of 1932 discussed, *supra*, pp. 14–15.)

Nonetheless the court below made but passing reference to this analysis (R. 22):

> There is no need to detail the extended legislative history on which the collector relies. It is enough to say that we have examined it with care and we do not think it necessarily supports the contention; and further, that it falls short of overcoming the fairly plain language used in the two sections of the statutes.[19]

---

[18] See also Senate Hearings on Revenue Act of 1924, 68th Cong., 1st Sess., p. 52. In connection with the 1926 Act see H. Conference Rep. No. 356, 69th Cong., 1st Sess., p. 48 (1939–1 Cum. Bull. (Part 2) 361, 375).

[19] Judge Huxman, on the other hand, found the Committee Reports to be a clear indication of the intention "not only [of] the Treasury Department but also the House and Senate" to include erroneous income tax assessments within the purview of Section 252. (R. 25–26.)

This conclusion in the teeth of an unusually clear legislative history, is, we submit, wholly without justification.

C. The decision below is contrary to a consistent, unambiguous and long established administrative practice

The decision here overturns a long established administrative practice which, until comparatively recently, had not been challenged. In many cases the controlling effect of Section 322 (b) was assumed without question. *United States* v. *Garbutt Oil Co.*, 302 U. S. 528; *Garbutt Oil Co.* v. *United States*, 89 F. 2d 749 (C. C. A. 9th); *Graham* v. *duPont*, 262 U. S. 234; *duPont* v. *Graham*, 283 Fed. 300 (D. Del.), *affirmed per curiam*, 284 Fed. 1017 (C. C. A. 3d); *Pelham Hall Co.* v. *Carney*, 111 F. 2d 944 (C. C. A. 1st); *Commissioner* v. *Rieck*, 104 F. 2d 294 (C. C. A. 3d), certiorari denied, 308 U. S. 602; *Welch Ins. Agency* v. *Brast*, 55 F. 2d 60 (C. C. A. 4th), certiorari denied, 285 U. S. 555; *Lucas* v. *United States*, 45 F. 2d 291 (App. D. C.); *Weinburg* v. *United States*, 25 F. Supp. 83 (C. Cls.), certiorari denied, 306 U. S. 661; *Central Hanover Bank & Trust Co.* v. *United States*, 67 F. Supp. 920 (S. D. N. Y.); *State Street Trust Co.* v. *United States*, 59 F. Supp. 467 (D. Mass.), affirmed *per curiam*, 151 F. 2d 1022 (C. C. A. 1st); *cf. United States* v. *Factors & Finance Co.*, 288 U. S. 89; *Commissioner* v. *Gooch Co.*, 320 U. S. 418; *Rosenman* v. *United States*,

323 U. S. 658; *Lewis* v. *Reynolds*, 48 F. 2d 515 (C. C. A. 10th), affirmed, 284 U. S. 281; *United States* v. *Frauenthal*, 138 F. 2d 188 (C. C. A. 8th); *Hyatt Roller Bearing Co.* v. *United States*, 43 F. 2d 1008, 1021 (C. Cls.); *Wisconsin Nat. Life Ins. Co.* v. *United States*, 42 F. 2d 316 (C. Cls.).[20]

The Treasury Regulations issued under every Revenue Act since 1924 have contained only one article dealing with the time limit on claims for refund of income taxes and have provided that they be filed within the time prescribed in Section 322 (b) or its predecessors.[21] The language of this article, Section 29.322–7, Regulations 111, quoted *supra*, p. 5, plainly indicates the understanding of the Treasury that all income tax refund claims are governed by Section 322, for the article says that "the Commissioner is prohibited from allowing or making a credit or refund of *income tax* imposed by chapter I" (italics supplied) after both periods found in Section 322 have expired. Moreover, Section

[20] *Huntley* v. *Southern Oregon Sales*, 102 F. 2d 538 (C. C. A. 9th), the first case in which the question was raised, was not decided until 1939 and was thought to be of narrow application. *United States* v. *Lederer Terminal W. Co.*, 139 F. 2d 679 (C. C. A. 6th), was decided in November, 1943. These are discussed *infra*, pp. 44–49.

[21] Sections 19.322–3 and 19.322–7 of Regulations 103 (1939); Articles 322–3 and 322–7 of Regulations 101 (1938), Regulations 94 (1936) and Regulations 86 (1934); Articles 1254 and 1257 of Regulations 77 (1932) and Regulations 74 (1928); Articles 1304 and 1305 of Regulations 69 (1926); and Articles 1306 and 1307 of Regulations 65 (1924). *Cf.* Article 1036 of Regulations 62 (1921).

29.322–3, quoted *supra*, p. 4, refers specifically to refund claims of taxes "erroneously or illegally collected" and for the limitations on refunds of such payments Section 29.322–3 is cross referenced to Section 29.322–7. Under these Regulations there is no ground for a supposed distinction between overpayments on the original return and erroneous collections. These sections are found in almost identical terms in all income tax regulations since Regulations 65, promulgated under the Revenue Act of 1924.

This administrative interpretation [22] that all income tax refund claims are governed by Section 322 or its predecessors is buttressed by numerous rulings and Treasury decisions consistent with the Regulations. Conspicuous examples of these are the following:

---

[22] See, for example, Treasury Form 843 (Revised April 1940), on which all claims for refund of income and other taxes must be filed. This form requires the Collector to indicate which one of the three types of claims the taxpayer has filed: (1) Refund of Tax Illegally Collected, (2) Refund of Amount Paid for Stamps Unused, or Used in Error or Excess, and (3) Abatement of Tax Assessed (not applicable to estate or income taxes). There is no place to designate so-called "overpayments." The use of this form was explained by the Commissioner in a letter quoted in *Connell* v. *Hopkins*, 43 F. 773, 775 (N. D. Tex.), as follows:

"Relative to the clause 'refund of taxes illegally collected', shown on the former claim for refund (Form 843), you are advised, it is intended to cover cases in which, through ignorance of the law or the proper method of computation, claimants might insert incorrect amounts, and, on examination of the claim, it is found that taxpayer is entitled to more than the amounts specified on the items set forth as grounds for refund."

I. T. 1447, I-2 Cum. Bull. 220 (1922):

Held: The amount of any *ad valorem* penalty and interest which has been *collected without authority* may be made the subject of a claim for credit against income, excess-profits or war-profits taxes due under other returns if claim for refund is filed within the five-year period of Section 252 of the 1918 and 1921 Revenue Acts.

T. D. 3457, II-1 Cum. Bull. 177 (1923) and T. D. 3462, amending Regulations 62, II-1 Cum. Bull. 180 (1923):

Held: Refunds of income taxes erroneously or illegally assessed or collected are, by the Act of March 4, 1923, expressly governed by Section 252 of the Revenue Act of 1921, as amended.

S. M. 1712, III-1 Cum. Bull. 345 (1924):

Held: Section 252 of the 1924 Act is applicable to claims for refund of an "amount of additional assessment" [referred to as an "overpayment"].

S. M. 2293, III-2 Cum. Bull. 310 (1924):

Held: Claims for refund of additional assessments of income tax are disallowed because not filed within the time prescribed by the Act of March 4, 1923, "notwithstanding the fact that they may have been filed within the four-year period prescribed in section 3228, Revised Statutes, as amended."

G. C. M. 3152, VII–1 Cum. Bull. 153 (1928):

Held: Payments of additional assessments are "overpayments".

G. C. M. 13759, XIII–2 Cum. Bull. 102 (1934):

Held: Claims for refund of taxes erroneously or illegally assessed or collected filed by the Alien Property Custodian are subject to the periods of limitation prescribed by the various Revenue Acts. [This ruling is found under the heading: "Supplement O.—Overpayments. Section 322.—Refunds and Credits."]

Mim. 4814, 1938–2 Cum. Bull. 96:

Held: The two year period of Section 322 (b), dating from the payment of the tax, is applicable to those cases in which *no return* is filed by the taxpayer. [The tax must therefore have been paid as a deficiency assessment—not "on the return".]

I. T. 3483, 1941–1 Cum. Bull. 397:

Held: Claims for refund of income tax *deficiencies,* paid on February 28, 1938, are, when filed on February 29, 1940, a leap year, within the two year period prescribed by Section 322 (b) (1) of the Revenue Act of 1934.

Under familiar principles, a consistent administrative construction of such long standing is entitled to great weight. Cf. *Taft* v. *Commissioner,* 304 U. S. 351, 357; *Helvering* v. *Winmill,* 305 U. S. 79, 83; *Douglas* v. *Commissioner,* 322 U. S. 275, 281; *Boehm* v. *Commissioner,* 326 U. S. 287, 291–292.

Nor is the evidence that the term "overpayments" includes "erroneous assessments" and "illegal collections" confined to rulings of the Treasury Department. Opinions of this Court clearly indicate the same understanding. The language in *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, and *United States* v. *Henry Prentiss & Co.*, 288 U. S. 73, is unequivocal in that respect. Again, in *United States* v. *Kales*, 314 U. S. 186, it was said (pp. 197–198):

> Originally, payment under protest to an internal revenue collector of *illegally* exacted taxes gave rise to a common law cause of action against the collector for restitution of *the overpayment*. [Italics supplied.]

In many other decisions there is plainly implicit the understanding that "overpayments" and "erroneous assessments" are synonymous.[23]

[23] Refund claims arising from "erroneous assessments" discussed as "overpayments": *United States Cartridge Co.* v. *United States*, 284 U. S. 511; *U. S. ex rel. Girard Co.* v. *Helvering*, 301 U. S. 540; *United States* v. *Garbutt Oil Co.*, 302 U. S. 528; *Maass* v. *Higgins*, 312 U. S. 443; *United States* v. *Kales*, 314 U. S. 186; *Safe Deposit & Trust Co. of Baltimore* v. *Tait*, 54 F. 2d 383 (D. C. D. Md.); *American Security & Trust Co.* v. *Tait*, 5 F. Supp. 337 (D. Md.); *Weinburg* v. *United States*, 25 F. Supp. 83 (C. Cls.), certiorari denied, 306 U. S. 661. Refund claims arising from payments on the return discussed as "erroneous or illegal assessments and collections"; *Girard Trust Co.* v. *United States*, 270 U. S. 163; *United States* v. *Memphis Cotton Oil Co.*, *supra*; *Huntley* v. *Standard Timber Co.*, 62 F. 2d 568 (C. C. A. 9th); *McKesson & Robbins* v. *Edwards*, 57 F. 2d 141 (C. C. A. 2d); *Wm. J. Friday & Co.* v. *United States*, 48 F. 2d 225, 226 (W. D. Pa.);

D. The decision below as applied to other sections of the Internal Revenue Code would produce incongruous and harsh results

1. *The payment of interest on refunds of erroneous assessments of tax would be prohibited*—The effect of the basis of the decision below is to cast serious doubt upon the right of the Commissioner of Internal Revenue to pay interest on refunds of income taxes erroneously assessed or collected. The only statutory provision which permits the payment of interest on refunds is Section 3771 (a) of the Internal Revenue Code, which provides that—

> Interest shall be allowed and paid upon any overpayment in respect of any internal

---

Grays Harbor Motorship Corp. v. *United States*, 45 F. 2d 259, 281, 282 (C. Cls.); *Wisconsin Nat. Life Ins. Co.* v. *United States*, 42 F. 2d 316 (C. Cls.); *Great Southern Life Ins. Co.* v. *United States*, 42 F. 2d 319 (C. Cls.); *McCarl* v. *United States ex rel. Leland*, 42 F. 2d 346 (App. D. C.); *Felt & Tarrant Mfg. Co.* v. *United States*, 37 F. 2d 977 (C. Cls.); *cf. Blair* v. *Birkenstock*, 271 U. S. 348; *cf. Marks* v. *United States*, 98 F. 2d 564 (C. C. A. 2d); *cf. Philipsborn* v. *United States*, 53 F. 2d 133 (C. Cls.). Claims discussed in one instance as "erroneous assessments" and in another as "overpayments": *United States* v. *Kales, supra; Wm. J. Friday & Co.* v. *United States*, 61 F. 2d 370 (C. C. A. 3d); *Lucas* v. *United States*, 45 F. 2d 291 (App. D. C.); *Wisconsin Nat. Life Ins. Co.* v. *United States*, 42 F. 2d 316 (C. Cls.); *McCarl* v. *United States ex rel. Leland*, 42 F. 2d 346 (App. D. C.); *Ohio Steel Foundry Co.* v. *United States*, 38 F. 2d 144 (C. Cls.); *Mellon* v. *United States*, 36 F. 2d 609 (App. D. C.); *American Security & Trust Co.* v. *Tait*, 5 F. Supp. 337 (D. Md.); *cf. Union Trust Co.* v. *United States*, 70 F. 2d 629 (C. C. A. 2d).

revenue tax at the rate of 6 per centum per annum.

If it is true that "overpayments" of taxes are different from erroneous or illegal collections of taxes, then there is no authority to be found anywhere in the Internal Revenue Code permitting the payment of interest on the refund of the latter types of collections.[24]

The exaction of interest from the Government requires specific statutory authority (*Rosenman* v. *United States*, 323 U. S. 658, 663) and may only be computed according to the statutory provisions in force at the time of the allowance of a refund or credit (*United States* v. *Boston Buick Co.*, 282 U. S. 476; *United States* v. *Magnolia Co.*, 276 U. S. 160; *Blair* v. *Birkenstock*, 271 U. S. 348).

---

[24] *Cf. Huntley* v. *Southern Oregon Sales*, 104 F. 2d 153 (C. C. A. 9th), where in a sequel to the first *Southern Oregon* case the court was driven by the logic of its earlier decision construing Sections 322 (b) and 3313 to hold that interest may not be awarded under Section 615 (a) of the Revenue Act of 1928 on a judgment for taxes which (it had held in the first *Southern Oregon* case) were "erroneously or illegally assessed and collected."

In *Sbarbaro* v. *United States* (N. D. Ill.), decided May 29, 1947 (1947 C. C. H., par. 9284), the District Court reached the conclusion that, although the alleged distinction between overpayment and erroneous assessment is proper as applied to Sections 322 and 3313 it is not applicable to Section 3771 because "it appears that plaintiffs were not indulging in a literal construction of 'overpayment' since judicial interpretation and legislative intent have given the definition which they attribute to it. The definition of any statutory term is conditioned by the intent with which the term is used within the section."

The suggested result would appear to be the reverse of what would be expected. That Congress should do less for the taxpayer who is constrained illegally to pay a tax than for one who pays as a result of his own error or negligence seems to be a distortion of logic and the reverse of what seems fair and equitable.

Prior to 1921 interest was payable on refunds of taxes made by the Commissioner or in suits against the United States. Section 1324 (a) of the Revenue Act of 1921 provided for the allowance of interest on refunds or credits if the taxes were paid "under a specific protest" or "pursuant to an additional assessment" or, if neither, then interest was to be computed from six months after the date of the filing of the refund claim. Section 1019 of the Revenue Act of 1924 changed the wording of this section to permit interest on the refund of "any internal-revenue tax erroneously or illegally assessed or collected, or of any penalty collected without authority, or of any sum which was excessive or in any manner wrongfully collected, * * *". Substantially the same provision appeared in Section 1116 of the Revenue Act of 1926.[25] Thereafter Section 614 of the Revenue Act of 1928 repealed Section 1116 (a) and provided for the payment of interest "upon any overpayment in respect of any internal-revenue tax * * *".

[25] See S. Rep. No. 52, 69th Cong., 1st Sess., p. 38 (1939-1 Cum. Bull. (Part 2) 332, 360).

The Committee Reports do not expressly explain the change in wording.[26]

However, the House Report (p. 35) described as "the principal change" (and the only one deemed worthy of mention by either the House or Senate Committee) that which required the payment of interest to a date not more than 30 days preceding the refund check. Thus the silence of the Reports is significant, for, if it were intended to exclude so great a number of refunds from the benefit of interest payments, an expression of such intention was in order.[27]

Interest has since 1921 been paid on all refunds, regardless of what caused the payment of such sum by the taxpayer in the first instance. And "it will not do to treat the same transaction as [over] payment and not as [over] payment, which

[26] H. Rep. No. 2, 78th Cong., 1st Sess., p. 35 (1939–1 Cum. Bull. (Part 2) 384, 408); S. Rep. No. 960, 70th Cong., 1st Sess., p. 43 (1939–1 Cum. Bull. (Part 2) 409, 439).

[27] Not a single suggestion of a contrary understanding is to be found in the legislative hearings and other Committee Reports in connection with any of the Revenue Acts. Senate Hearings on Revenue Act of 1924, 68th Cong., 1st Sess., pp. 54–56. *Cf.* House Hearings on Revenue Revision 1924, 68th Cong., 1st Sess., p. 512; Senate Hearings on Revenue Revision 1925, 69th Cong., p. 1009; House Hearings on Revenue Revision 1927–1928, 69th-70th Congresses, pp. 109, 138, 187, 545; S. Rep. No. 1240, 74th Cong., 1st Sess., pp. 12–13 (1939–1 Cum. Bull. (Part 2) 651, 659); H. Conference Rep. No. 1885, 74th Cong., 1st Sess., p. 12 (1939–1 Cum. Bull. (Part 2) 660, 665). See also Report of the Joint Committee on Internal Revenue Taxation (1928), Vol. I, pp. 16–17.

ever favors" the taxpayer. *Cf. Rosenman v. United States, supra,* p. 663.

2. *The jurisdiction of the Tax Court would be curtailed.*—Perhaps an even more important result of the distinction drawn by the court below would be in the limitation it would impose upon the jurisdiction of the Tax Court. In any case where a deficiency in income taxes has been determined and the taxpayer has filed a petition for review, subsection (d) of the very section here in question (Section 322) gives jurisdiction to the Tax Court to find that a taxpayer "has made an overpayment of tax". Appendix, *infra.* The result of the distinction between "overpayment" and "erroneous or illegal collection" drawn in the decision below if applied consistently, would be to limit the Tax Court's jurisdiction to make such findings only to those cases where the excessive payment results from an error made on the return. No jurisdiction would exist in the harsher situation, one which more obviously calls for relief to the taxpayer, where the payment of the tax arose from the Commissioner's erroneous or illegal assessment. Such a serious limitation upon the jurisdiction of the Tax Court could only be justified on the basis of a statutory command in the most express language.[28]

[28] There is no trace of even an indirect suggestion of the need or desirability of such a result in the legislative history. *Cf.* H. Rep. No. 1, 69th Cong., 1st Sess., pp. 13–14 (1939–1

The purpose of investing the Tax Court with jurisdiction of overpayments was to provide a remedy whereby the taxpayer might have his "entire tax liability for the year in question * * * finally and completely settled" in a single proceeding.[29] No possible reason suggests itself therefore for the exclusion from such a proceeding of items paid as a result of an erroneous assessment by the Commissioner. And in practice no such limitation has been recognized.[30]

Cum. Bull. (Part 2) 315, 324); S. Rep. No. 52, 69th Cong., 1st Sess., pp. 25–28 (1939–1 Cum. Bull. (Part 2) 332, 351–352); H. Conference Rep. No. 356, 69th Cong., 1st Sess., pp. 42, 49 (1939–1 Cum. Bull. (Part 2) 361, 370–371, 375); House Hearings on Revenue Revision 1927–1928, 69th–70th Congresses, pp. 100–101; H. Rep. No. 2, 70th Cong., 1st Sess., pp. 24–25, 29–30 (1939–1 Cum. Bull. (Part 2) 384, 400–401, 403–404); S. Rep. No. 960, 70th Cong., 1st Sess., pp. 33, 36–37 (1939–1 Cum. Bull. (Part 2) 409, 432, 434–435); H. Rep. No. 704, 73d Cong., 2d Sess., pp. 35, 37–38 (1939–1 Cum. Bull. (Part 2) 554, 580–581, 582); S. Rep. No. 558, 73d Cong., 2d Sess., pp. 44, 47 (1939–1 Cum. Bull. (Part 2) 586, 620, 622); H. Conference Rep. No. 1385, 73d Cong., 2d Sess., p. 26 (1939–1 Cum. Bull. (Part 2) 627, 635); H. Rep. No. 1860, 75th Cong., 3d Sess., pp. 49, 69 (1939–1 Cum. Bull. (Part 2) 728, 764, 778).

[29] S. Rep. No. 52, 69th Cong., 1st Sess., pp. 26–27 (1939–1 Cum. Bull. (Part 2) 332, 351–352). *Cf. Ohio Steel Foundry Co.* v. *United States*, 38 F. 2d 144, 145–148 (C. Cls.); *Warren Mfg. Co.* v. *Tait*, 60 F. 2d 982 (D. C. D. Md.).

[30] *U. S. ex rel Girard Co.* v. *Helvering*, 301 U. S. 540; *Greylock Mills* v. *Commissioner*, 9 B. T. A. 1281, affirmed, 31 F. 2d 635 (C. C. A. 2d); *cf. Roslyn Fuel Co.* v. *Commissioner*, 16 B. T. A. 285.

E. *The lower court cases on which the court below relied were erroneously decided*

The distinction drawn by the court below is consistent with certain decisions[21] beginning with *Huntley* v. *Southern Oregon Sales*, 102 F. 2d 538 (C. C. A. 9th). We submit that the *Southern Oregon* case is demonstrably erroneous and that the cases which followed it simply compounded the error.

The *Southern Oregon* case involved a taxpayer corporation which, after payment of the tax, was determined to be wholly exempt,—that is, not required to file a return. The court attached significance to this factor, for in its analysis of Section 252 of the Revenue Act of 1921, the court stated (pp. 541–542) that it believed its construction to be correct because "borne out by the fact that Section 252 applied only to taxpayers required to file returns". The court conjectured that (p. 543):

---

[21] *Olsen* v. *United States*, 32 F. Supp. 276 (S. D. Calif.); *United States* v. *Lederer Terminal W. Co.*, 139 F. 2d 679 (C. C. A. 6th); *In re Tindle's Estate*, 59 F. Supp. 667 (E. D. Pa.), affirmed *per curiam sub nom. Pennsylvania Co. for Insurance on Lives* v. *United States*, 152 F. 2d 757 (C. C. A. 3d); *Godfrey* v. *United States*, 61 F. Supp. 240 (S. D. N. Y.); *Noble* v. *Kavanagh*, 66 F. Supp. 258 (E. D. Mich.), affirmed *per curiam*, 169 F. 2d 104 (C. C. A. 6th); *Sbarbaro* v. *United States* (N. D. Ill.), decided May 29, 1947 (1947 C. C. H., par. 9284). *Contra*, *Central Hanover Bank & Trust Co.* v. *United States*, 67 F. Supp. 920 (S. D. N. Y.); *Fawcett* v. *United States*, 70 F. Supp. 742 (N. D. Calif.).

> The distinction made had a logical basis. It would take less time to discover errors in returns required to be filed than it would to discover whether persons had correctly considered themselves exempt and not required to file returns at all. In the former case, information was at hand, while in the latter it must be sought.[22]

The reverse explanation would seem more probable. Congress might more understandably have permitted taxpayers a longer time to discover errors of "mere overpayments"—which errors would be less likely to be called to the attention of, and be subject to reexamination by, a taxpayer—as compared with "erroneous assessments"—the payment of which would be involuntary and which would evoke the opposition of the taxpayer.

The analysis in the *Southern Oregon* case by the Circuit Court of Appeals of the statutory development does not include any mention of the Mellon letter or the House Committee's statement on the reason for the changes made by Section 1 of the Act of March 4, 1923, which we have discussed *supra*, pp. 22–26. This may explain the failure of the *Southern Oregon* opinion to appreciate the significance of the 1923 Act or the 1924 revision. The court's analysis (pp. 539–543) did nothing except to demonstrate the exist-

[22] Under this theory the limitation of Section 3228 of the Revised Statutes, if applied to income taxes at all, ought to be applied only where no return is required.

ence of an apparent conflict between Section 252 of the 1921 Act and Section 3228, Revised Statutes, as amended. But it found nothing in the legislative history to resolve that conflict and its conclusion rests on the merest conjecture.

As shown, the "logical basis" referred to above is not supported by the logic of the situation; nor, as will appear, can it rest on the actual statutory periods involved.

If the Government's view is the correct one, a comparison between the two sections cannot be made (until the 1924 Act). Since the periods were measured in one section from the due date of the return and in the other from the date of payment, either section may have given a longer statutory period depending on the date of assessment and payment. If, on the other hand, the distinction drawn below between "overpayments" and "erroneous assessments" is correct then the time given for the filing of claims was, until the Revenue Act of 1924, a *longer* period for the so-called overpayments under Sections 252 and 284 than for "erroneous assessments" under Section 3228 of the Revised Statutes.

Section 14 (a) of the Revenue Act of 1916 had removed the statute of limitations completely from income tax claims whereas the two-year provision in Section 3228 remained the same. In Section 252 of the Revenue Act of 1918, the limitation period became five years from the time the return was due as compared with the two-year

(from accrual of the cause of action) provision of Section 3228. The Revenue Act of 1921 reenacted Section 252 without material change although the two-year period of Section 3228 was extended by Section 1316 to four years from the payment of the tax. The Act of March 4, 1923, as already shown, added the two-year period from the date of payment to Section 252. In the Revenue Act of 1924 the periods of limitation were four years from payment of tax under both Section 281 of that Act and Section 3228 as amended. Not until the Revenue Act of 1926 did the overpayment section in respect of income taxes (Section 284 of the 1926 Act) provide for a three-year period as compared with the four-year period of Section 3228. Thus, in each of the Revenue Acts apparently regarded by the *Southern Oregon* opinion as crucial and as providing a decisive answer, the so-called "overpayment" section actually provided for *more* time in which to file refund claims than did the "erroneous assessment" section, and not, as the opinion reasons, "less time" to discover overpayments.[33] Therefore, the conclusion cannot be sustained either on the analysis of the legislative history or on its "logical basis".

In *United States* v. *Lederer Terminal W. Co., supra,* the Sixth Circuit relied on the statutory

[33] Compare the last quoted sentence of the Senate Finance Committee Report explaining the 1923 amendment; *supra,* p. 25.

analysis of the *Southern Oregon* case, but did not accept the restricted view implicit in the logical basis there advanced. The court said (p. 681):

> The fact that in the cited cases *no tax whatever* was due from the taxpayer while in the instant case *no additional tax was due* is deemed immaterial.
>
> * * * * * * * * *
>
> The essential distinction is that Section 322 relates to *mere overpayment*, while Section 3313 properly applies to *erroneous or illegal assessment* and collection.

The court then advanced a new "logical basis" for the distinction between the two statutes (p. 681):

> Congress evidently considered that less time would be required for the discovery of errors in tax returns resultant from miscalculations or mere overpayment than would be required to ascertain the erroneous or illegal nature of an assessment. Hence, the inference is logical that Congress intended to allow the taxpayer a longer time to determine whether he had been erroneously or illegally assessed than would be permitted him for the discovery of a mere overpayment of taxes, assessed and collected upon a correct or legal basis. This would explain the longer time limitation provided by Congress in Section 3313 than that allowed in Section 322 of the Internal Revenue Code.

For the reasons stated, this explanation is as unsatisfactory as that given by the *Southern Oregon* opinion.

Olsen v. *United States, supra,* was decided by a District Court in the Ninth Circuit, and the court merely relied on the *Southern Oregon* case.

The decision of the District Court in *In re Tindle's Estate, supra,* was affirmed by the Circuit Court of Appeals without opinion. The District Court, in reaching its decision, relied on the same group of cases which the instant taxpayer cites, so the decision adds nothing of real substance to the weight behind the decision of the question in those cases.[34] Moreover, the taxes involved were estate taxes governed by Section 319 (b) of the Revenue Act of 1926, now Section 910, Internal Revenue Code. This section specifically refers to taxes erroneously or illegally assessed or collected, thus making it impossible to sustain the conclusion that such taxes are governed by Section 3313 of the Code. The District Court decision on this question is, therefore, patently wrong and wholly unreliable as a precedent.

In *Godfrey* v. *United States, supra,* the District Court denied the Government's motion to dismiss

[34] Any significance the case might have had is also weakened by the presence of a question whether a rider attached to the tax return was an informal claim for refund which would have been timely and would have been cured by the formal claim for refund later filed. It was this question which formed the principal ground for debate in the case.

based upon the limitation question, but the taxpayer subsequently voluntarily abandoned the case on the merits. The court there accepted the analysis of the limitations statutes in the *Southern Oregon* case and simply followed that decision. The same may be said of *Noble* v. *Kavanagh* and *Sbarbaro* v. *United States, supra.*

These cases so completely rely on the *Southern Oregon* and *Lederer* cases that they add little or nothing to the weight of those cases in support of the taxpayer's contention.

F. The doctrine of legislative acquiescence, relied on below, is inapplicable to this case

The court below stated (R. 22) that Congress should be regarded as having approved the interpretation of the statutes by the *Southern Oregon* case (decided March, 1939) and those which followed, in view of the fact that Congress has convened from time to time and has amended Section 322 without disapproving that interpretation. Although the doctrine of legislative acquiescence may have its place, it is nevertheless only an aid to statutory construction (cf. *Helvering* v. *Reynolds,* 313 U. S. 428, 432), and is not to be applied rigidly in disregard of plain facts. And the plain facts here are that the *Southern Oregon* decision was merely that of an intermediate court, that the Government did not ask for certiorari on this issue in the absence of a conflict

until now because the question had not assumed its present importance, and that since the *Southern Oregon* decision seemed plainly wrong, it was felt more desirable to litigate the issue further than to seek legislative correction. The word "overpayment" appears in the statute in numerous places, and an attempted legislative correction might not be as satisfactory as a reversal of an erroneous decision.

Surely, every time that a circuit court of appeals hands down an erroneous decision, the Treasury should not be faced with the necessity of applying for certiorari or of asking for legislative relief. It should be permitted the choice of litigating the issue further in other cases, as it has done in the present situation, without being faced with the contention that the erroneous decision has meanwhile become imbedded in the law. Cf. *Helvering* v. *Hallock*, 309 U. S. 106, 119–121; *Girouard* v. *United States*, 328 U. S. 61, 69–70; cf. *United States* v. *Underwriters Assn.*, 322 U. S. 533, 556.

The decisions cited by the court below applied the doctrine of legislative acquiescence in situations where there had been a continued and consistent judicial expression for long periods of time.[35] None of them involved such a relatively

[35] *Sessions* v. *Romadka*, 145 U. S. 29, 41–46 (26 years); *Manhattan Prop.* v. *Irving Tr. Co.*, 291 U. S. 320, 336 (more than 34 years); *United States* v. *Elgin, J. & E. Ry.*, 298 U. S. 492, 500 (27 years); *Missouri* v. *Ross*, 299 U. S. 72, 75 (30

short period as the present case, where the plain facts negative the possibility that the matter was called to the attention of Congress, wholly apart from the ambiguity of legislative inaction even where the matter is actively placed before it. The rule, if it may be called such, should not be regarded as applicable unless the decisions are in fact made known to Congress (cf. *Manhattan Prop.* v. *Irving Tr. Co.*, 291 U. S. 320, 334), or unless such knowledge may be inferred from the importance or notoriety of the case. Neither of these circumstances is here present. As Judge Huxman said in his dissenting opinion below (R. 27), no reason is apparent for the presumption—

> that the *Huntley* decision, which is approximately eight years old and which relates to a minor detail in the administration of the income tax law, came to the attention of Congress * * * especially so since during all that time Congress was occupied with matters of greatest importance to our national existence.

If the doctrine of Congressional approval by re-enactment of the revenue laws is applicable, it ought to be applied as an adoption of the Treasury Regulations and long-standing rulings (see pp. 33–36, *supra*) rather than the *Southern Oregon* decision.

---

years); *Electric Battery Co.* v. *Shimadzu*, 307 U. S. 5, 14 (42 years). See also *United States* v. *Ryan*, 284 U. S. 167, 174–175 (more than 60 years); *B & O Railroad* v. *Baugh*, 149 U. S. 368, 372 (50 years).

CONCLUSION

The decision below is erroneous and should be reversed.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.
THERON LAMAR CAUDLE,
Assistant Attorney General.
ARNOLD RAUM,
HELEN R. CARLOSS,
LEE A. JACKSON,
S. WALTER SHINE,
Special Assistants to the Attorney General.

OCTOBER, 1947

Revenue Act of 1916, c. 463, 39 Stat. 756:

TITLE I—INCOME TAX

* * *

ASSESSMENT AND ADMINISTRATION

SEC. 14. (a) * * * upon the examination of any return of income made pursuant to this title * * * [or under the Corporation Excise Tax Act of August 5, 1909, or the Tariff and Revenue Act of October 3, 1913] * * * if it shall appear that amounts of tax have been paid in excess of those properly due, the taxpayer shall be permitted to present a claim for refund thereof notwithstanding the provisions of section thirty-two hundred and twenty-eight of the Revised Statutes.

Revenue Act of 1918, c. 18, 40 Stat. 1057:

TITLE II—INCOME TAX

* * *

REFUNDS

SEC. 252. That if, upon examination of any return of income made pursuant to this Act, * * * [the Corporation Excise Tax Act of August 5, 1909, the Tariff and Revenue Act of October 3, 1913, the Revenue Act of 1916, as amended, or the Revenue Act of 1917] * * * it appears that an amount of income, war-profits or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of Section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer: *Provided*, That no such credit or refund shall be allowed or made after five years from the date when the return was due, unless before the expiration of such five years a claim therefor is filed by the taxpayer.

Revenue Act of 1921, c. 136, 42 Stat. 227:

TITLE II—INCOME TAX

* * *

REFUNDS

SEC. 252. That if, upon examination of any return of income made pursuant to this Act, * * * [the Corporation Excise Tax Act of August 5, 1909, the Tariff and Revenue Act of October 3, 1913, the Revenue Act of 1916, as amended, the Revenue Act of 1917, or the Revenue Act of 1918] * * * it appears that an amount of income, war-profits or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer: *Provided*, That no such credit or refund shall be allowed or made after five years from the date when the return was due, unless before the expiration of such five years a claim therefor is filed by the taxpayer: * * *

The Act of March 4, 1923, c. 276, 42 Stat. 1504:

* * *

SEC. 252. (a) That if, upon examination of any return of income made pursuant to this Act, * * * [the Act of August 5, 1909, the Act of October 3, 1913, the Revenue Act of 1916, as amended, or the Revenue Acts of 1917 or 1918] * * * it appears that an amount of income, war-profits or excess-profits tax has been paid in excess of that properly due, then, notwithstanding the provisions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer: *Provided*, That no such credit or refund shall be allowed or made after five years from the date when the return was due, unless before the expiration of such five years a claim therefor is filed by the taxpayer, or unless before the expiration of two years from the time the tax was paid a claim therefor is filed by the taxpayer: * * *

(b) Where a tax has been paid under the provisions of section 221 or 237 in excess of that properly due, any refund or credit made under the provisions of this section or section 3228 of the Revised Statutes shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.

Revenue Act of 1924, c. 234, 43 Stat. 253:

TITLE II—INCOME TAX

* * *

OVERPAYMENTS

SEC. 272. If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the excess shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the excess shall be credited or refunded as provided in section 281.

* * *

CREDITS AND REFUNDS

SEC. 281. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this Act * * * [the 1909-1921 taxing Acts inclusive] * * *, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

(b) Except as provided in subdivisions (c) and (e) of this section, (1) no such credit or refund shall be allowed or made after four years from the time the tax was paid, unless before the expiration of such four years a claim therefor is filed by the taxpayer, nor (2) shall the amount of the credit or refund exceed the portion of the tax paid during the four years immediately preceding the filing of the claim or, if no claim was filed, then during the four years immediately preceding the allowance of the credit or refund.

Revenue Act of 1926, c. 27, 44 Stat. 9:

TITLE II—INCOME TAX

* * *

OVERPAYMENTS

SEC. 272. If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the excess shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the excess shall be credited or refunded as provided in section 284.

* * *

CREDITS AND REFUNDS

SEC. 284. (a) Where there has been an overpayment of any income, war-profits, or excess-profits tax imposed by this Act * * * [the 1909-1924 taxing Acts inclusive] * * * the amount of such overpayment shall, except as provided in subdivision (d), be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance of such excess shall be refunded immediately to the taxpayer.

(b) Except as provided in subdivisions (c), (d), (e), and (g) of this section—

(1) No such credit or refund shall be allowed or made after three years from the time the tax was paid in the case of a tax imposed by this Act, nor after four years from the time the tax was paid in the case of a tax imposed by any prior Act, unless before the expiration of such period a claim therefor is filed by the taxpayer; and

(2) The amount of the credit or refund shall not exceed the portion of the tax paid during the three or four years, respectively, immediately preceding the filing of the claim, or if no claim was filed, then during the three or four years, respectively, immediately preceding the allowance of the credit or refund.

* * *

Revenue Act of 1928, c. 852, 45 Stat. 791:

TITLE I—INCOME TAX

* * *

SUPPLEMENT O—OVERPAYMENTS

SEC. 321. OVERPAYMENT OF INSTALLMENT.

If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayment shall be credited or refunded as provided in section 322.

SEC. 322. REFUNDS AND CREDITS.

(a) **Authorization.**—Where there has been an overpayment of any tax imposed by this title, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer.

(b) **Limitation on Allowance.**—

(1) PERIOD OF LIMITATION.—No such credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) LIMIT ON AMOUNT OF CREDIT OR REFUND.—The amount of the credit or refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim, or if no claim was filed, then during the two years immediately preceding the allowance of the credit or refund.

* * *

(d) OVERPAYMENT FOUND BY BOARD.—If the Board finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the Commissioner determined the deficiency, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount, when the decision of the Board has become final, be credited or refunded to the taxpayer. * * *

Revenue Act of 1932, c. 209, 47 Stat. 169:

TITLE I—INCOME TAX

* * *

SUPPLEMENT O—OVERPAYMENTS

SEC. 321. OVERPAYMENT OF INSTALLMENT.

[Identical with Section 321 of the Revenue Act of 1928.]

SEC. 322. REFUNDS AND CREDITS.

(a) **Authorization.**

[Identical with Section 322 (a) of the Revenue Act of 1928.]

(b) **Limitation on Allowance.**—

[Identical with Section 322 (b) of the Revenue Act of 1928.]

* * *

(d) **Overpayment found by Board.**—

[First sentence identical with first sentence of Section 322 (d) of the Revenue Act of 1928.]

Revenue Act of 1934, c. 277, 48 Stat. 680:

TITLE I—INCOME TAX

* * *

SUPPLEMENT O—OVERPAYMENTS

SEC. 321. OVERPAYMENT OF INSTALLMENT.

[Identical with Section 321 of the Revenue Act of 1932.]

SEC. 322. REFUNDS AND CREDITS.

(a) **Authorization.**—

[Identical with Section 322 (A) of the Revenue Act of 1932.]

(b) **Limitation on Allowance.**—

(1) PERIOD OF LIMITATION.—Unless a claim for credit or refund is filed by the taxpayer within three years from the time the return was filed by the taxpayer or within two years from the time the tax was paid, no credit or refund shall be allowed or made after the expiration of whichever of such periods expires the later. If no return is filed by the taxpayer, then no credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) LIMIT ON AMOUNT OF CREDIT OR REFUND.—The amount of the credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or, if no claim was filed, then during the three years immediately preceding the allowance of the credit or refund.

* * *

Internal Revenue Code:

CHAPTER 1—INCOME TAX

* * *

SUPPLEMENT O—OVERPAYMENTS

* * *

SEC. 321. OVERPAYMENT OF INSTALLMENT.

If the taxpayer has paid as an installment of the tax more than the amount determined to be the correct amount of such installment, the overpayment shall be credited against the unpaid installments, if any. If the amount already paid, whether or not on the basis of installments, exceeds the amount determined to be the correct amount of the tax, the overpayments shall be credited or refunded as provided in section 322.

SEC. 322. REFUNDS AND CREDITS.

(a) **Authorization.**—

(1) OVERPAYMENT.—Where there has been an overpayment of any tax imposed by this chapter, the amount of such overpayment shall be credited against any income, war-profits, or excess-profits tax or installment thereof then due from the taxpayer, and any balance shall be refunded immediately to the taxpayer.

* * *

(b) **Limitation on Allowance.**—

(1) PERIOD OF LIMITATION.—Unless a claim for credit or refund is filed by the taxpayer within three years from the time the return was filed by the taxpayer or within two years from the time the tax was paid, no credit or refund shall be allowed or made after the expiration of whichever of such periods expires the later. If no return is filed by the taxpayer, then no credit or refund shall be allowed or made after two years from the time the tax was paid, unless before the expiration of such period a claim therefor is filed by the taxpayer.

(2) LIMIT ON AMOUNT OF CREDIT OR REFUND.—The amount of the credit or refund shall not exceed the portion of the tax paid—

(A) If a return was filed by the taxpayer, and the claim was filed within three years from the time the return was filed, during the three years immediately preceding the filing of the claim.

(B) If a claim was filed, and (i) no return was filed, or (ii) if the claim was not filed within three years from the time the return was filed by the taxpayer, during the two years immediately preceding the filing of the claim.

(C) If no claim was filed and the allowance of credit or refund is made within three years from the time the return was filed by the taxpayer, during the three years immediately preceding the allowance of the credit or refund.

(D) If no claim was filed, and (i) no return was filed or (ii) the allowance of the credit or refund is not made within three years from the time the return was filed by the taxpayer, during the two years immediately preceding the allowance of the credit or refund.

Revised Statutes:

SEC. 3228. All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued: *Provided*, That claims which accrued prior to June six eighteen hundred and seventy-two, may be presented to the Commissioner at any time within one year from said date. But nothing in this section shall be construed to revive any right of action which was already barred by any statute on that date.

SEC. 1316. That section 3228 of the Revised Statutes is amended to read as follows:

"SEC. 3228. All claims for the refunding or crediting of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within four years next after payment of such tax, penalty, or sum."

This section, except as modified by section 252, shall apply retroactively to claims for refund under the Revenue Act of 1916, the Revenue Act of 1917, and the Revenue Act of 1918.

(e) If the Board finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the Commissioner determined the deficiency, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the taxpayer as provided in subdivision (a). * * *

TITLE X.—GENERAL ADMINISTRATIVE PROVISIONS

* * *

REFUNDS

* * *

SEC. 1012. Section 3228 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 3228. (a) All claims for the refunding or crediting of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as provided in section 281 of the Revenue Act of 1924, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum.

"(b) Except as provided in section 281 of the Revenue Act of 1924, claims for credit or refund (other than claims in respect of taxes imposed by the Revenue Act of 1916, the Revenue Act of 1917, or the Revenue Act of 1918) which at the time of the enactment of the Revenue Act of 1921 were barred from allowance by the period of limitation then in existence, shall not be allowed."

TITLE XI.—GENERAL ADMINISTRATIVE PROVISIONS

* * *

REFUNDS

* * *

SEC. 1112. Section 3228 of the Revised Statutes, as amended, is amended to read as follows:

"SEC. 3228. (a) All claims for the refunding or crediting of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as provided in sections 284 and 319 of the Revenue Act of 1926, be presented to the Commissioner of Internal Revenue within four years next after the payment of such tax, penalty, or sum.

"(b) Except as provided in section 284 of the Revenue Act of 1926, claims for credit or refund (other than claims in respect of taxes imposed by the Revenue Act of 1916, the Revenue Act of 1917, or the Revenue Act of 1918) which at the time of the enactment of the Revenue Act of 1921 were barred from allowance by the period of limitation then in existence, shall not be allowed."

TITLE IV—ADMINISTRATIVE PROVISIONS

* * *

SEC. 619. MINOR ADMINISTRATIVE AMENDMENTS.

* * *

(c) Section 3228 of the Revised Statutes, as amended by section 1112 of the Revenue Act of 1926, is amended by striking out "except as provided in Sections 284 and 319 of the Revenue Act of 1926" and inserting "except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes".

TITLE IX—ADMINISTRATIVE AND GENERAL PROVISIONS

* * *

SEC. [illegible]. REFUNDS OF MISCELLANEOUS TAXES.

(a) Subsection (a) of section 3228 of the Revised Statutes, as amended, is amended by adding at the end thereof the following:

"The amount of the refund (in the case of taxes other than income, war-profits, excess-profits, estate, and gift taxes) shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim; or if no claim was filed, then during the four years immediately preceding the allowance of the refund.

"(b) The amendment made by subsection (a) of this section to section 3228 of the Revised Statutes shall not bar from allowance a claim for refund filed prior to the enactment of this Act which but for such enactment would have been allowable."

(d) **Overpayment found by Board.**

[First sentence identical with first sentence of Section 322 (d) of the Revenue Act of 1932.]

[Sections 321 and 322 (a) and (b) and the first sentence of (d) of the **Revenue Act of 1936**, c. 690, 49 Stat. 1648, and of the **Revenue Act of 1938**, c. 289, 52 Stat. 447, are identical with the corresponding sections of the Revenue Act of 1934.]

* * *

(d) OVERPAYMENT FOUND BY BOARD.—If the Board finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the Commissioner determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of tax in respect of such taxable year, the Board shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Board has become final, be credited or refunded to the taxpayer.

* * *

CHAPTER 28—PROVISIONS COMMON TO MISCELLANEOUS TAXES

SUBCHAPTER A—GENERAL PROVISIONS

* * *

SEC. 3313. PERIOD OF LIMITATION UPON REFUNDS AND CREDITS.

All claims for the refunding or crediting of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected must, except as otherwise provided by law in the case of income, war-profits, excess-profits, estate, and gift taxes, be presented to the Commissioner within four years next after the payment of such tax, penalty, or sum. The amount of the refund (in the case of taxes other than income, war-profits, excess-profits, estate, and gift taxes) shall not exceed the portion of the tax, penalty, or sum paid during the four years immediately preceding the filing of the claim, or if no claim was filed, then during the four years immediately preceding the allowance of the refund.

764869—47 (Face p. 54)

U. S. GOVERNMENT PRINTING OFFICE: 1947